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Supreme Court of the United States

October Term, 1967

No. 1308

CORLISS LAMONT, on behalf of himself and all others similarly situated,

Petitioner,

against

COMMISSIONER OF MOTOR VEHICLES and R. L. POLK & CO.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

LEONARD B. BOUDIN,
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30 East 42nd Street,
New York, New York 10017,
Attorneys for Petitioner.

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Supreme Court of the United States

October Term, 1967

No.

CORLISS LAMONT, on behalf of himself and all others similarly situated,

Petitioner,

against

COMMISSIONER OF MOTOR VEHICLES and R. L. POLK & CO.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered herein on December 12, 1967.

Opinions Below

The *per curiam* opinion of the Court of Appeals, as yet unreported, appears in the Appendix, *infra*, pp. 15-16. The opinion of the District Court is reported at 269 F. Supp. 880 and appears in the Appendix, *infra*, pp. 18-24.

Jurisdiction

The judgment of the Court of Appeals was entered on December 12, 1967 and appears in the Appendix, *infra*, p. 17. By order of Mr. Justice Harlan, dated March 4, 1968, petitioner's time to file this petition was extended to April 11, 1968.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Questions Presented

1. Whether Section 202(3) of the New York Vehicle and Traffic Law:

(a) violates the First and Fourteenth Amendments' guarantee of freedom of speech by giving the respondent R. L. Polk & Co. preferential means of communication with the public;

(b) violates petitioner's right of privacy and his right to due process under the Fourth and Fourteenth Amendments by the State's delivery to Polk, for its private use, of information given to the State for a public purpose.

2. Whether the courts below employed an erroneous standard in refusing to convene a three-judge court.

Statutes Involved

This case involves the constitutionality of § 202(3) of the New York Vehicle and Traffic Law which reads, in pertinent part, as follows:

> The commissioner may, in his discretion, contract with the highest responsible bidder to furnish copies of records of all vehicle registrations for any registration period, or number of periods not exceeding five years in the aggregate, with respect to a given territory. In such event, the fees provided by this section shall not apply to copies of records furnished under any such contract.

The entire § 202(3) and the pertinent part of § 401 of the same law are set forth in the Appendix, *infra*, pp. 13-14.

Statement of the Case

Petitioner brought this action on behalf of himself and all other owners of motor vehicles registered under the New York Vehicle and Traffic Law, § 401, to enjoin as unconstitutional the operation of § 202(3) of the same law; pursuant to which New York microfilms and sells to the highest bidder for its private use all the data filed by automobile registrants as a condition to the use of their vehicles.

All New York owners of vehicles used on the public highways register their vehicles, by paying a fee and completing a form calling for the owner's name, address, employer's name and address, date of birth, sex, insurance data, description of vehicle and whether the owner has been convicted of certain criminal offenses. On new registration forms the Social Security number and the Employer's Identification number must be included. This information is kept by the Commissioner, who is not authorized to make the registration book available for public inspection generally. Vehicle and Traffic Law, § 401(2). A member of the public, however, may obtain information about an individual registrant upon payment of a statutory fee but only upon a showing of proper purpose or interest. *Cf. People* v. *Harnett,* 131 Misc. 75, *aff'd* 224 App. Div. 127, *aff'd* 249 N.Y. 606 (1928).

New York Vehicle and Traffic Law, § 202(3) creates an exception to this scheme by authorizing the Commissioner to furnish to the highest bidder a list of persons whose vehicles are thus registered. Pursuant to § 202(3), the State complies lists of three different types of registrations: dealer and transport registrations, special registrations, and ordinary automobile registrations. It reproduces the automobile registration applications on 35 millimeter microfilm rolls and furnishes these rolls to the selected purchaser.

The State agrees to furnish the films only to the selected purchaser who has exclusive possession of them until a specified time when he must return them to the State. The purchaser is free, if it wishes, to reproduce the lists and microfilms and to sell them to whomever he pleases. He is specifically authorized to utilize the information for the purpose of making compilations and to use such compilations in his business as he sees fit. [Contract between Commissioner of Motor Vehicles and R. L. Polk and Co. (R. 33-45).][1]

Respondent, R. L. Polk & Co., frequently has been and is currently the chosen purchaser of the New York State records. Polk is engaged in a highly sophisticated and far-flung marketing operation. It boasts of having the world's largest "Selective Circulation List" which provides a computerized breakdown of millions of individuals in terms of their likelihood of buying certain products and in certain price ranges; it publishes city directories compiled from door-to-door interviews throughout America; it provides a bank directory listing information on every known bank in the world; it conducts wide-scale house-to-house selling and public-relations campaigns for various industries, and it undertakes comprehensive mail advertising campaigns for its clients (R. 26-29).

The Motor Statistical and Motor List Division, directly involved herein, purports to account for every registered new vehicle buyer and every registered owner in all the cities, towns and rural areas of the United States, a task it does so well that the automotive industry enjoys the advantages of having the most clearly defined and accessible market information of all industries. It is the only industry that knows *who* buys its and its competitors' products *when and what they buy* and *where* the buyers can be reached by name and address (R. 27). This is effectuated

[1] "R" refers to the record in the District Court.

by computer processing of data on each and every motor vehicle owner. By counting, selecting, screening and interpreting, Polk provides for its clients an enormous potential market where individual owners and susceptible buyers can readily be contacted by unsolicited mail, telephone and home interview. Often the solicitation is done by Polk directly; other times by dealers who purchase or lease the information gathered by Polk.

Petitioner brought this action to declare § 202(3) unconstitutional and to enjoin its enforcement on the ground that it authorizes a joint campaign, in which the State is an essential participant, of commercial propaganda and unwanted intrusions into the home. Petitioner alleged that the State and Polk have acted in concert to compel his audience for commercial propaganda and invade his privacy, and that § 202(3), authorizing this invasion, is repugnant to the First, Fourth, Fifth, Ninth and Fourteenth Amendments of the Constitution.

The district court granted the Commissioner's motion to dismiss the complaint and denied petitioner's motion for a three-judge court. It stated that, in its view, petitioner's contentions had little chance of success, not being "arguably sufficient to warrant full-scale consideration in the Supreme Court on an appeal as of right from a three-judge district court", *infra*, p. 23. It added that the consequences of error on its part in refusing to convene a three-judge court "is at most to postpone invalidation of the State's law. And that, in the circumstances of this case, is a bearable possibility", *infra*, p. 23. The Court of Appeals affirmed "for substantially the reasons contained in the opinion of Judge Frankel below", *infra*, p. 16.

REASONS FOR GRANTING THE WRIT

I

Section 202(3) of the New York Vehicle and Traffic Law violates petitioner's right of privacy and freedom of speech guaranteed by the Constitution.

1. The New York statute combines a violation of First Amendment rights with an impairment of petitioner's right of privacy. The impact of computers on record-keeping systems has been to destroy practical boundaries of privacy much as electronics surveillance devices have destroyed the boundaries of door and wall; *cf. Berger* v. *New York,* 388 U.S. 41; see generally Westin, *Privacy and Freedom* (1967). The sudden mushrooming of electronic data processing during the past few years and its inevitable growth in the future create new and disturbing problems in the handling of public records. Until recent years access to motor vehicle registration records was of importance to the public principally for identification of automobiles which were involved in accidents. Broader use was limited by the sheer impossibility of manipulating a large volume of data. Thus the value of registration information was fairly restricted to legitimate inquiries relating to the use of automobiles. The use of electronic data processing for the benefit of a single purchaser has totally changed this situation. The data is now available for a purpose unrelated to the reasons for the registration. If permitted here, the contents of other public records, heretofore available only upon laborious personal inquiry, will be accessible at a push of a button, releasing a terrifying array of personal information.

The automobile registration data, vis-a-vis the Department of Motor Vehicles, is innocuous. The Department is entitled to know the registrant's name, address, age, employer, and descriptive details of his automobile and

insurance. But what is of no particular sensitivity in the hands of public officials may well have a different aspect in the hands of private persons. This is particularly true where those private persons are engaged in the business of collecting information concerning large numbers of citizens and presumably sorting and manipulating it on their own computers.

The phenomenon of the State selling dossiers to private commercial firms is a glaring misuse of public records and an invasion of the privacy of the citizen. When the data may be combined with information from other sources, digested and disgorged in a multitude of permutations for uses beyond the power of the State to control, then any semblance of anonymity is lost.

We have entered the first stage of the era of "data surveillance", Westin, *supra*, at 158. The process is subject to the Fourth Amendment's guarantee of privacy, "one of the unique values of our civilization", *McDonald* v. *United States*, 335 U.S. 451, 453. The citizen is entitled to privacy not only in his home, but in every reasonable area of his life; see *Katz* v. *United States*, 389 U.S. 347. Those areas include public records to the extent necessary to protect against oppressive intrusion. It is imperative that appropriate standards be set if the citizen is not to become the victim of the machine.

2. The present case presents no overriding state interests which justify any intrusion into petitioner's privacy. The District Court was over-generous in stating that Section 202 "may not be the most inspired kind of government function", *infra*, p. 22. The statute was not enacted in an effort to promote the health, welfare or security of the people of New York. It is doubtful whether the State's token income comprises even "a small source of much needed revenue", *infra*, p. 22, in view of the substantial microfilm costs to the state. In any event, much more sub-

stantial interests have been held to be "insufficient to justify so substantial a weakening of the Fourth Amendment's protection", *Camara* v. *Municipal Court of San Francisco,* 387 U.S. 523, 534. On the other side of the scale, there is the right of individual and group privacy—*i.e.,* the right of the citizen to determine to what extent information about himself is to be communicated to others by the government. *Cf. Bates* v. *City of Little Rock,* 361 U.S. 516; *NAACP* v. *Alabama,* 377 U.S. 288. There is the right to be free of needless and unwanted intrusions in the home which are reflected in this Court's approval of the statutory ban on commercial door-to-door solicitation in *Breard* v. *Alexandria,* 341 U.S. 622, 640.

3. The instant case directly poses the meaning of this Court's decision in *Public Utilities Commission* v. *Pollak,* 343 U.S. 451. The District Court read this case as containing "important implications" against the petitioner, *infra,* p. 21. We read it as a recognition of the right of "privacy to which he is entitled in his own home", *supra* at p. 464, in contrast to the right of the "passenger on the public vehicle". See also the opinion of Mr. Justice Black explicitly setting forth a different view where more than music is involved, 343 U.S. at 466. The constitutional right of privacy is not lost because the data does not contain "intimate" facts since the right of privacy is not dependent upon the nature of the data sold by the government to a particular business. Hence the warning that "in these matters of spirit inroads on legitmacy must be resisted at their incipiency", *Sweezy* v. *New Hampshire,* 354 U.S. 234, 263-4. See also *Boyd* v. *United States,* 116 U.S. 616.

4. This case poses an additional important issue under the First and Fourteenth Amendments never decided by this Court—whether a state has a right to grant a particular business concern a monopoly of communication with a large sector of the public. New York has admittedly given

this preferential treatment to respondent Polk by giving it exclusive access to all the relevant data of automobile registrants in the State of New York. This statutory monopoly violates the state's duty of neutrality in matters of speech. It is the antithesis of a "free trade in ideas" (Mr. Justice Holmes dissenting in *Abrams* v. *United States,* 250 U.S. 616, 630). Since the monopoly is predicated upon successful bidding, the statute has the additional constitutional defect of violating the principle that "[f]reedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way", *Murdock* v. *Commonwealth of Pennsylvania,* 319 U.S. 105, 111. That the governing consideration is Polk's financial ability only underscores the unconstitutionality of the preference. See *Harper* v. *Virginia Board of Elections,* 383 U.S. 663, 666; *Griffin* v. *Illinois,* 351 U.S. 12, 23.

5. The statute conflicts with this Court's view that "[i]t is clearly unconstitutional to enable a public official to determine which expressions of view will be permitted and which will not or to engage in invidious discrimination among persons or groups . . . by use of a statute providing a system of broad discriminatory licensing power", *Cox* v. *Louisiana,* 379 U.S. 536, 557. In *Lamont* v. *Postmaster General,* 381 U.S. 301, this Court struck down a statute in which the federal government discouraged the delivery to the public of certain types of mail. The instant case involves the corollary principle that the state may not encourage distribution of propaganda which it favors.

6. The State's use of public facilities for the benefit of a particular private enterprise raises a most important question of due process, namely whether public facilities may constitutionally be used "in aid of the enterprise of others which are not of a public character", see *Savings and Loan Association* v. *Topeka,* 20 Wall. 655, 659. While

there are no direct precedents, it would seem most doubtful that any government, state or federal can constitutionally divert its resource for the benefit of a favored business enterprise.

The problem is a large one, as indicated by the fact that "eighteen other States appear to have adopted similar practices", *infra*, p. 22. At least one other lawsuit raising the same issue is presently pending in a state court, *Chapin* v. *Tynan*, No. 150994, Superior Court, Hartford Co. (1967). In view of the public opposition which these statutes have aroused, they are certain to give rise to repeated litigation until the issue is resolved by the court. In addition, the implications of the statute and of the decisions below have ramifications which extend to virtually all governmental systems of registration in a variety of contexts. It is important that this Court determine whether such information filed for a governmental purpose can constitutionally be sold to and used by a single private enterprise.

II

The courts below employed an erroneous standard in deciding that the complaint did not require the convening of a three-judge court.

1. Petitioner's claim arises upon a clean slate and poses the constitutionality of a novel statute of a type never considered by this Court. In such a case the single judge's role is limited to ascertaining whether the issues are arguable or, in the court's own language, "fairly open to debate." Argument on the merits must be had before a three-judge district court. Any other standard not only merges the jurisdictional and substantive issues by ineluctably thrusting the single judge deep into the merits, but does so at a wholly inappropriate stage of the proceeding. Such a threshold decision is made on the basis of the com-

plaint, an inadequate vehicle for the development of thorough constitutional argument. This is especially so where the claim, as here, entails unprecedented and rather intricate constitutional issues.

2. The District Court was in error in suggesting that its task was "to decide only whether the contention has some plausible chance of success, arguably sufficient to warrant full-scale consideration in the Supreme Court on an appeal as of right from a three-judge district court", *infra*, pp. 22-33. There is a large difference between deciding whether an issue is open to debate and whether its chances of success are sufficient to warrant this Court's review.

3. The standard used in this case entails a decision indistinguishable from a decision on the merits of the constitutional claim. Thus, the District Court disposed of the complaint because, in its view, "plaintiff proposes to stretch the constitutional dimensions of 'privacy' far beyond any reasonable foreseeable limits the court ought to enforce", *infra*, p. 22. Recognizing that it was departing from the customary standard for determining substantiality, it added that "[p]erhaps 'unsubstantiality' need not be so plain when a single judge dismisses as it should probably be when a single judge finds the *defense of constitutionality* frivolous (*Bailey* v. *Patterson, supra*) and then enjoins enforcement of the state statute", *infra*, p. 23. It found consolation in the fact that in the former case "the normally less major consequence of error is at most to postpone invalidation of the State's law." *Ibid.*

4. The statutory scheme was meant to provide speedy, authoritative resolution of the constitutional issues for the benefit of the complainant as well as of the state. This Court's decision in *Bailey* v. *Patterson*, 369 U.S. 31, does not support a dual standard of substantiality. Current

hostility to three-judge court litigation produces such anomalies as the failure of one district judge to convene a three-judge court on the ground that the constitutional question was not "substantial", *Harrell* v. *Board of Commissioners of District of Columbia,* 269 F. Supp. 919 (D.D.C. 1967) three days after another three-judge district court held an identical statute to be unconstitutional, *Thompson* v. *Shapiro,* 270 F. Supp. 331 (D. Conn. 1967). Such results are not productive of respect for the judicial process. District judges should be required to adhere to the test laid down by this Court, and to convene three-judge courts where, as here, the constitutional questions raised are not "frivolous" or "plainly unsubstantial". See, *e.g., Reed Enterprises* v. *Corcoran,* 354 F. 2d 519 (D.C. Cir. 1965); *Stamler* v. *Willis,* 371 F. 2d 413 (7th Cir. 1966).

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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April 10, 1968

APPENDIX

New York Vehicle and Traffic Law

§ 202. Fees for Searches and Copies of Records and Documents.

* * *

3. Fees for copies of records and documents. The fees for copies of records and documents, other than accident reports, shall be as follows: Written or typewritten copies, twenty-five cents per folio, with a minimum of one dollar. Negative photostatic copies, fifty cents per page not exceeding twenty-four square inches in area and one dollar per page in all other cases. The fee for a positive photostatic copy shall be double the fee for a negative photostatic copy. The fee for a negative photostatic copy of an accident report shall be two dollars. The fee for a positive copy of such a report shall be three dollars and fifty cents. If certification of a copy of a record or document is required, there shall be an additional fee of fifty cents.

The commissioner may, in his discretion, contract with the highest responsible bidder to furnish copies of records of all vehicle registrations for any registration period, or number of periods not exceeding five years in the aggregate, with respect to a given territory. In such event, the fees provided by this section shall not apply to copies of records furnished under any such contract.

§ 401. Registration of Motor Vehicles; Fees; Renewals.

1. Registration by owners. a. No motor vehicle shall be operated or driven upon the public highways of this state without first being registered in accordance with the provisions of this article, except as otherwise expressly provided in this chapter.

b. Every owner of a motor vehicle which shall be operated or driven upon the public highways of this state shall, except as otherwise expressly provided, cause to be presented, by mail or otherwise, to the office or a branch office of the commissioner, or to any agent of the commissioner, constituted as provided in this chapter, an application for registration addressed to the commissioner, and on a blank to be prepared under the direction of and furnished by the commissioner for that purpose, containing: (a) a brief description of the motor vehicle to be registered, including the name and factory number of such vehicle, and such other facts as the commissioner shall require;

2. Registration record. Upon the receipt of a sufficient application for registration of a motor vehicle or trailer, as provided in this article, the commissioner, or the agent receiving it, shall register such motor vehicle or trailer and maintain a record of the registration of such vehicle under the distinctive number assigned to such motor vehicle or trailer as provided in this section, and the information in such record may be obtained upon payment of the fees specified in section two hundred two of this chapter.

Opinion of the Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 205—September Term, 1967

(Argued November 28, 1967 Decided Dec. 12, 1967)

Docket No. 31595

—o—

CORLISS LAMONT, on behalf of himself and all others similarly situated,

Plaintiff-Appellant,

—against—

COMMISSIONER OF MOTOR VEHICLES and R. L. POLK & Co.,

Defendants-Appellees.

—o—

Before:

Moore, Smith and Hays, *Circuit Judges.*

Appeal from an order of the United States District Court for the Southern District of New York, Marvin E. Frankel, *Judge,* denying appellant's motion to convene a three-judge court and granting appellees' motion to dismiss

the complaint. Opinion below reported at 269 F. Supp. 880. Affirmed.

Leonard Boudin, New York, N. Y. (Rabinowitz and Boudin; Victor Rabinowitz, David Rein, and Joan Goldberg, New York, N. Y., of counsel), for plaintiff-appellant.

Mortimer Sattler, New York, N. Y. (Louis J. Lefkowitz, Attorney General of the State of New York; Samuel A. Hirshowitz, First Assistant Attorney General, and Joel Lewittes, New York, N. Y., of counsel), for defendant-appellee, Commissioner of Motor Vehicles.

Wyllys S. Newcomb, New York, N. Y. (Royall, Koegel, Rogers & Wells; John M. O'Hara and Guy C. Quinlan, New York, N. Y., of counsel), for defendant-appellee, R. L. Polk & Co.

Per Curiam

We affirm for substantially the reasons contained in the opinion of Judge Frankel below, reported at 269 F. Supp. 880 (S.D. N.Y. 1967).

Judgment of United States Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the twelfth day of December one thousand nine hundred and sixty-seven.

Present:

HON. LEONARD P. MOORE,
HON. J. JOSEPH SMITH,
HON. PAUL R. HAYS,
Circuit Judges.

CORLISS LAMONT, on behalf of himself and all others similarly situated,
Plaintiff-Appellant,

v.

COMMISSIONER OF MOTOR VEHICLES and R. L. POLK & Co.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

A. DAVID FUSARO,
Clerk.

Opinion of District Court

(R. pp. 67-75)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

FRANKEL, *D. J.*

Suing for himself "and all other owners of motor vehicles duly registered" in New York, plaintiff seeks declaratory and injunctive relief based upon the asserted unconstitutionality of N. Y. Vehicle and Traffic Law § 202(3), which provides that the Commissioner of Motor Vehicles

> "may, in his discretion, contract with the highest responsible bidder to furnish copies of records of all vehicle registrations for any registration period, or number of periods not exceeding five years in the aggregate, with respect to a given territory. In such event, the fees provided by this section [for searching and supplying copies of such records] shall not apply to copies of records furnished under any such contract."

The defendants are the Commissioner of Motor Vehicles and R. L. Polk & Co., which is said to be in the business, *inter alia,* of compiling directories and is alleged to have acquired the registration records as "the highest responsible bidder" under the statute. In addition to seeking a

declaration that §202(3) is unconstitutional under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments, along with an injunction "restraining the enforcement and operation" of the statute, plaintiff asks for a judgment of $10,000 against defendant Polk. The court's jurisdiction is said to rest upon 28 U.S.C. §§ 1331, 1343(3), 2201, 2202, 2281, and 2284; 42 U.S.C. § 1983; and the foregoing Amendments to the Federal Constitution.

Plaintiff has moved for the convening of a three-judge court under 28 U.S.C. §§ 2281 and 2284.[1] Defendants oppose the motion, urging that the asserted constitutional issue is "plainly unsubstantial," *Ex parte Poresky*, 290 U.S. 30, 32 (1933); cf. *Bailey* v. *Patterson*, 369 U.S. 31 (1962), and that the complaint should, accordingly, be dismissed by a single judge.

The allegations generating these opposing views—taken as true, of course, for present purposes—are: that plaintiff and others like him are compelled to register their motor vehicles with the Commissioner; that defendant Polk, having acquired the registration records, uses the names itself, or sells or leases the lists to others, "for the solicitation through the mails, by telephone and in person, of the registered owners of vehicles, for the purchase of merchandise;" and that the result has been "considerable annoyance, inconvenience and damage to the plaintiff and other registrants by reason of the large volume of advertising and crank mail and other solicitation to which they are subjected." Defendants' actions and the provisions of § 202 (3), the complaint concludes, "are in violation of the right of privacy of the plaintiff and other registrants, and constitutes [*sic*] deprivation of their liberty and property under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution."[2]

In support of the view that the constitutional issue he raises is sufficiently substantial to warrant the attention

of a three-judge court, plaintiff's able counsel presents written argument which reads in its entirety as follows:

> "The substantiality of the constitutional question raised by the complaint in this case is shown by the recent cases dealing with the sanctity of a man's home and the privacies of life. *Griswold* v. *Conn.*, 381 U.S. 479; *Mapp* v. *Ohio*, 367 U.S. 643; *Breard* v. *Alexandria*, 341 U.S. 622; *Public Utilities Comm'n* v. *Pollack* [*sic*], 343 U.S. 451; *Monroe* v. *Pape*, 365 U.S. 167; *Frank* v. *Maryland*, 359 U.S. 360; *Skinner* v. *Oklahoma*, 316 U.S. 535."[3]

To be sure, brevity, a somewhat rare delight in courthouses, is not to be discouraged by equating it with "unsubstantiality." It should also be observed that counsel argued engagingly, and at considerably greater length, in oral support of the view that expanding judicial concern for "the privacies of life" shows enough movement in the law to preclude dismissal of his complaint as frivolous. In the end, however, plaintiff's single sentence of written argument, followed by the citation of seven cases, among which one hurts him and six are inapposite, may fairly be taken as the legal measure of his novel claim.

It would be pedantic to linger over the many distinctions between this case and those involving searches and seizures (*Mapp* v. *Ohio, supra; Monroe* v. *Pape, supra;* cf. *Frank* v. *Maryland, supra*[4]), the sanctity of the marital relationship (*Griswold* v. *Connecticut, supra*), the power of States to *limit* solicitation (*Breard* v. *Alexandria, supra*), and laws for compulsory sterilization (*Skinner* v. *Oklahoma, supra*). The citation closest to the mark in plaintiff's list is *Public Utilities Comm'n* v. *Pollak,* and that is adverse to him. There, the dispute was over governmental approval of radio broadcasts, including commercial messages, to the captive

audiences in publicly franchised buses and street cars. The intrusive assault upon the privacy and serenity of unwilling listeners forced to use public conveyances was so jangling to one normally hardy "victim" on the Supreme Court that he found himself unable to rule dispassionately upon the constitutional issue. 343 U.S. at 466-67 (FRANKFURTER, *J.*). The Court majority pointedly recorded (p. 465) its expression of "no opinion as to the desirability of radio programs in public vehicles." The Court then proceeded, however, to reject the claim that the outraged listeners could invoke the right of privacy or other constitutionally protected interests to shut out the radio broadcasts. Mr. Justice Black dissented in part on grounds that give little or no comfort to the plaintiff in this case. The dissent of Mr. Justice Douglas, centering on the right of privacy, distinguished "the man on the streetcar," forced to hear the broadcasts, from the person at home who is free to turn off or away from an offensive program. *Id.* at 469.

Strictly speaking, that decision is not squarely in point. It contains important implications, however, that lead *a fortiori* to the defeat of this plaintiff's claim. There is no captive quality in the plight of which plaintiff complains. The mail box, however noxious its advertising contents often seem to judges as well as other poeple, is hardly the kind of enclave that requires constitutional defense to protect "the privacies of life." The short, though regular, journey from mail box to trash can—for the contents of which the State chooses to pay the freight when it facilitates the distribution of trash—is an acceptable burden, at least so far as the Constitution is concerned. And the bells at the door and on the telephone, though their ring is a more imperious nuisance than the mailman's tidings, accomplish more peripheral assaults than the blare of an inescapable radio.

The information sold by the Commissioner is not vital or intimate. It is, moreover, in the category of "public records," available to anyone upon demand. See Vehicle and Traffic Law § 401(2). Indeed, questions more troublesome than plaintiff's might arise if the State adopted a policy of "privacy" or "secrecy" with respect to such information.[5] What the State has done in practical effect is to tap a small source of much-needed revenue by offering a convenient "packaging" service. This may not be the most inspired kind of government function, although it may be noted that eighteen other States appear to have adopted similar practices.[6] The point of importance, whatever aesthetic or other judgments might be prompted by this activity, is that it reflects a rational and allowable balancing of values by the elected representatives of the people.

In his contrary thesis, plaintiff proposes to stretch the constitutional dimensions of "privacy" far beyond any reasonably foreseeable limits the courts ought to enforce. His claim is in an area where there is no invidious discrimination, no problem of a wrong unreachable at the polls, no suggestion of an affliction confined to a relatively helpless minority. Cf. *Reynolds* v. *Sims*, 377 U.S. 533, 553 (1964); *West Virginia Board of Education* v. *Barnette*, 319 U.S. 624, 638 (1943). His alleged injury, shared with what is probably a majority of the electorate, results from a judgment by the State which appears to be well within its "vast leeway in the management of its internal affairs." *Sailors* v. *Board of Education*, — U.S. —, — (1967).

Of course, the fact that a claim is novel does not in itself brand it as unsubstantial. Cf. *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 159 (Frankfurter, J., concurring). The non-mathematical task of the single judge in a case like this is to decide only whether

the contention has some plausible chance of success, arguably sufficient to warrant full-scale consideration in the Supreme Court on an appeal as of right from a three-judge district court. Perhaps "unsubstantiality" need not be so plain when a single judge dismisses as it should probably be when a single judge finds the *defense of constitutionality* frivolous (*Bailey* v. *Patterson, supra*) and then enjoins enforcement of the state statute. In the latter situation, the protection of three-judge deliberation is withheld though the case is squarely within the primary purpose of the scheme—"that a single judge ought not to be empowered to invalidate a state statute under a federal claim * * *." *Id.*, 369 U.S. at 33; and see *Green* v. *Board of Elections, supra*, — F.2d at —. But where, as in this case, a single judge finds the plaintiff's contentions plainly unsubstantial, the normally less major consequence of error is at most to postpone invalidation of the State's law. And that, in the circumstances of this case, is a bearable possibility.

For the reasons above stated, the motion to convene a three-judge court is denied. The motions to dismiss the complaint are granted. The complaint is dismissed.

So ordered.

Dated: New York, New York,
June 22, 1967.

MARVIN E. FRANKEL
U.S.D.J.

FOOTNOTES:

1. Plaintiff's motion papers also request a preliminary injunction, but it was stated upon argument that this application is not being pressed at this time, pending the ruling on whether a three-judge court is appropriate.

2. There is no allegation that plaintiff has demanded exclusion of his name from the list sold by the Commissioner. In response to the court's inquiry, the State Attorney General has taken the position that this is immaterial in any event. With that representation, the question is treated on the premise that such a demand by the plaintiff would have been futile.

3. Plainiff's Memorandum of Law, pp. 5-6.

4. Overruled in *Camara* v. *Municipal Court*, —— U.S. —— (1967).

5. Compare the Act of July 4, 1966, 80 Stat. 250, amending Section 3 of the Administrative Procedure Act to expand the availability of agency records and providing, *inter alia*, that "the burden shall be upon the agency to sustain its action" when it resists disclosure.

6. Cal. Vehicle Code Ann. § 1811 (West Supp. 1966); Conn. Gen. Stat. Rev. § 14-49(r) (1958); Fla. Stat. § 319.25 (5)(a) (1965); Ill. Rev. Stat. ch. 95 ½, § 3-418 (1959); Ind. Ann. Stat. § 47-2625 (Burns Replacement 1965); Mich. Comp. Laws Ann. § 257.232 (1967); Minn. Stat. Ann. § 168.33 Subd. 3 (1960); Mont. Rev. Codes Ann. § 53-101(8) (1947); Ohio Rev. Code Ann. § 4503.26 (Page 1965); Okla. Stat. Ann. tit. 47, § 22.24 (1962); Pa. Stat. Ann. tit. 75, § 417 (1960); S.C. Code Ann. § 46-120 (1962); Gen. & Special Laws of Texas Chap. 720 § 36 of H.B. 12 (59th Legislature 1965) and Minute Order of Texas Highway Commission pursuant thereto dated February 16, 1966; Utah Code Ann. §§ 41-1-60 (Supp. 1965), 41-1-61 (1953); Vt. Stat. Ann. tit. 23, § 109 (1959); Va. Code Ann. § 46. 1-32 (1967); W. Va. Code Ann. § 1721 (140) (1961); Wis. Stat. Ann. § 341.17 (Supp. 1967).

Defendant Polk, in an undisputed compilation of statutes which need not be reproduced here, reports its finding of provisions in every State except Kentucky making public records of vehicle registration information. The substantially uniform state practice is not decisive, but it is another item of some weight against plaintiff's constitutional theory. Cf. *McGowan* v. *Maryland*, 366 U.S. 420, 497 (1961) (opinion of Mr. Justice Frankfurter); *Green* v. *Board of Elections*, —— F.2d ——, —— (2d Cir. 1967).

SUPREME COURT, U. S.

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Supreme Court of the United States

OCTOBER TERM 1967

No. 1308

CORLISS LAMONT, on behalf of himself and all others similarly situated,

Petitioner,

against

COMMISSIONER OF MOTOR VEHICLES and R. L. POLK & Co.,

Respondents.

BRIEF FOR RESPONDENT COMMISSIONER OF MOTOR VEHICLES IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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BRIEF FOR RESPONDENT COMMISSIONER OF MOTOR VEHICLES IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Opinions Below

The opinion of the District Court (App. p. 18 of Pet.) is reported at 269 F. Supp. 880. The opinion of the Court of Appeals for the Second Circuit is unreported as yet (App. p. 17 of petition).

Jurisdiction

The jurisdictional requisites are adequately set forth in the petition.

Question Presented

Does the sale by the Commissioner of Motor Vehicles to another of the list of New York motor vehicle registrants, a list containing neither intimate nor vital facts concerning the individual motor registrant and undeniably a public record within the meaning of New York Public Officers Law § 66, violate the right of privacy of petitioner, a New York motor vehicle registrant?

Statute Involved

This case involves the alleged unconstitutionality of § 202(3) of the New York Vehicle and Traffic Law.

Statement

Petitioner's complaint alleges that he is a New York resident and owner of a motor vehicle registered pursuant to the provisions of the New York Vehicle and Traffic Law § 401. He commenced this action below on behalf of himself and allegedly all other owners of motor vehicles registered in New York* seeking both a declaratory judgment declaring New York Vehicle and Traffic Law § 202(3) unconstitutional and the convening of a three judge court.

In particular, petitioner alleges that the respondent R. L. Polk & Co. is a Delaware corporation doing business in New York and is engaged *inter alia* in the business of compiling and publishing directories and reference books. In accordance with Vehicle and Traffic Law § 202(3) respondent Commissioner of Motor Vehicles has sold and delivered the 1967 list of names of registered owners of motor

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* It is clear that one who attacks the constitutionality of the statute can only do so insofar as it affects himself and not others even though of the same general class. *Tileston* v. *Ullman*, 318 U. S. 442 (1943); *Voeller* v. *Neilston Warehouse Co.*, 311 U. S. 531 (1941).

vehicles to respondent Polk & Co., the highest responsible bidder therefor, and petitioner alleges that the Commissioner will continue to sell this list to that company unless ordered to cease and desist.

Section 202(3) of the New York Vehicle and Traffic Law provides that the Commissioner of Motor Vehicles:

> "may, in his discretion, contract with the highest responsible bidder to furnish copies of records of all vehicle registrations for any registration period, or number of periods not exceeding five years in the aggregate, with respect to a given territory. In such event, the fees provided by this section [for searching and supplying copies of such records] shall not apply to copies of records furnished under any such contract."

Petitioner alleges that Polk & Co. in turn uses the names so purchased from the Commissioner to solicit "through the mails by telephone and in person of the registered owners of vehicles, for the purchase of merchandise" and that such solicitation has resulted in "considerable annoyance . . . . by reason of the large volume of advertising and crank mail" in derogation of his rights of privacy.

Reasons for Denying the Writ

Petitioner has wholly failed to raise a substantial constitutional question.

(1)

Petitioner below sought the convening of a three-judge court to declare New York Vehicle and Traffic Law § 202 subd. 3 unconstitutional as a violation of his right to privacy.

It has been often stated by this Court that "the three-judge procedure is an extraordinary one, imposing a heavy burden on federal courts, with attendant expense and delay.

That procedure designed for a specific class of cases, sharply defined, shall not be lightly extended". *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co.*, 292 U. S. 386, 391 (1934).

The history of the unique feature in our federal jurisprudence was recently set forth in *Swift & Co. et al.* v. *Wickham*, 382 U. S. 111, 116-124 (1965). This Court there reaffirmed the axiomatic proposition that the three-judge court enactment is not to be viewed "as a measure of broad social policy to be construed with great liberality, but as an enactment technical in the strict sense of the term are to be applied as such". *Phillips* v. *United States*, 312 U. S. 246, 251 (1941).

Upon an application for the convening of a statutory three-judge court, the power of the single district judge is limited to threshold inquiries of (a) whether the constitutional question raised is a substantial one and (b) whether the complaint sets forth a basis for invoking the traditional equity jurisdiction of the federal courts.* *Idlewild Bon Voyage Liquor Corp.* v. *Epstein*, 370 U. S. 713, 715 (1962).

It is apparent from the complaint in this action that the petitioner has not presented any basis for convening a three-judge court.

The formula to be applied in determining whether or not a substantial federal question has been presented is set forth in *California Water Service Co. et al.* v. *City of Redding*, 304 U. S. 252 (1938):

> "The lack of substantiality in a federal question may appear either because it is obviously without merit or because its unsoundness so clearly results from the

---

* Since, as we demonstrate below, that respondent's claim is so clearly insubstantial, we deem it unnecessary to explore this aspect of respondent's complaint.

previous decision of . . . [the Supreme] Court as to foreclose the subject." *Id.* at 255.

The Courts below, unquestionably applying that formula, properly determined that the petitioner's assertions were wholly without merit and accordingly presented no substantial federal question requiring the convening of a statutory Court.

(2)

In 1890, an article appeared in the Harvard Law Review which, overnight, added a new dimension to the law, a "right of privacy". See Warren & Brandeis, *The Right of Privacy,* 4 Harv. L. Rev. 193 (1890) . Since publication of that article the legal commentators have catalogued the existence of four separate actionable groups of torts which would violate one's right to privacy.

Professor Prosser and other legal commentators have classified those four groups of cases as follows: (1) public disclosure of private information about a plaintiff's life; (2) intrusion upon plaintiff's physical solitude or seclusion; (3) publicity which places the plaintiff in a false light in the public eye and (4) appropriation of the plaintiff's name or likeness.*

The petitioner, in this action, has cast his two-pronged attack upon the constitutionality of New York Vehicle & Traffic Law § 202(3) and the alleged use of the information received by Polk & Co. in terms of a violation of his right to privacy.

Although petitioner, naively or otherwise, seeks to spread the broad mantle of invasion of privacy over both these

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* Prosser on Torts § 112 (3d edition 1964); see also Feinberg, *Recent Developments in the Law of Privacy,* 48 Col. L. Rev. 713 (1948); see generally, annot, 138 A.L.R. 22 (1942) supplemented in Annot, 14 A.L.R. 2d 750 (1950).

allegations, each prong of the attack is governed by distinct and separate considerations.

Clearly, petitioner's attack upon the constitutionality of Vehicle & Traffic Law § 202(3) which provides for the sale of certain information to the highest bidder is properly catalogued under the group of cases under the law of privacy described above as public disclosure of details of one's private life; the petitioner's attack upon the use by Polk & Co. of this information, allegedly resulting in a deluge of noxious mail upon his mailbox, bears consideration of the law of privacy as it relates to an intrusion upon one's solitude or seclusion.

An examination of these two contentions substantiates the finding by the District Court and the Court of Appeals of insubstantiality.

(a)

Right to Privacy: Publicity Given to an Individual's Private Life.

Since, as just noted, the petitioner chose to predicate his challenge to New York's Vehicle & Traffic Law § 202(3) on his asserted right to privacy, it is pertinent to determine the extent of this right as it relates to a cause of action given to one whose details of his personal life have been allegedly wrongfully disclosed. This aspect of the right to privacy has been described as the right to repress publication of those facts which "concern the private life, habits, acts and relations of an individual . . ." Warren and Brandeis, 4 Harv. L. Rev. at 216 quoted in *Sidis* v. *F-R Pub. Corp.*, 113 F. 2d 806, 809 (2d Cir. 1940). See also *Cason* v. *Basken*, 20 So. 2d 243, 249 (Fla. 1945).

In this light the insubstantiality of petitioner's assertion immediately is evident. It cannot be plausibly contended that the information required of the motor vehicle registrant touches the individual's private life or habits.

Vehicle & Traffic Law § 401(2) provides that the Commissioner shall register the motor vehicle with the name, residence and business address of the owner. Moreover, these non-intimate facts are to be entered into a book and "the information in such record may be obtained upon payment of the fees specified in § 202 of this chapter". Thus these facts are clearly public records and have so been judicially determined. *Page* v. *Harnett*, 130 Misc. 239 (Sup. Ct. Albany Co. 1927).* Nor does the petitioner contend otherwise. Indeed, no assertion can be found in petitioner's complaint in the District Court that the information required of a motor vehicle registrant infringes one's right to privacy. His claim simply involve his objection to the receipt of unwelcome mail which he presumes stems from the list of motor registrants supplied to Polk & Co. as high bidder. It therefore is inconceivable how such admittedly non-intimate information which clearly violates no ordinary sense of decency and which is openly available to public inspection and scrutiny suddenly, in the mind of the petitioner, ripens into an invasion of privacy upon the sale of such public information to a private firm in accordance with Vehicle & Traffic Law § 202(3).

Finally, although for the purposes of the discussion we have relied upon the tort law concept of invasion of privacy, the historic basis of this "right", the petitioner has utterly failed to produce one single case that has considered the actionable tort of wrongful publicity given to an individual's private life as one rising to constitutional dimensions. The conclusion is inescapable that petitioner's attack upon Vehicle & Traffic Law § 202(3) is wholly without merit and perforce insubstantial.

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* See also Public Officers Law § 66; *Matter of Werfel* v. *Fitzgerald*, 23 A. D. 2d 306 (2d Dept. 1965). For other examples of public record statutes see N. Y. Real Property Tax Law §§ 506, 516, 1406, 1410; N. Y. Election Law § 34.

(b)

Right to Privacy: Intrusion Upon an Individual's Solitude or Seclusion.

We now turn to petitioner's contention that the use made by Polk & Co. of the registration list purchased by it from the Commissioner resulted in a large volume of advertising and crank mail to the annoyance of petitioner and in violation of his right to privacy. Leaving aside the fact that petitioner has critically not alleged in his complaint that he was the recipient of crank mail traceable to Polk & Company's list obtained from the Commissioner, it is clear that his allegation with respect to the use made by Polk & Company of the list fails to present a substantial constitutional question, requiring the convening of a three-judge court.

First, it is elementary that an attack upon the alleged unconstitutional application of an otherwise constitutional statute is not a ground for constituting the statutory court. *Phillips* v. *United States,* 312 U. S. 246 (1941); *Ex Parte Bransford,* 210 U. S. 354 (1940). Yet the use by Polk & Co. of the list obtained in accordance with the statute here is precisely what petitioner seeks to restrain.

Second, although this Court has recognized, in a few instances, that the actionable tort of "intrusion" unlike that of public divulgence to the public of one's private history (*supra,* pp. 5-6), may be constitutionally protected, the area of petitioner's privacy allegedly intruded upon (his mail box) is far and away outside the pale of constitutionally required protection. This observation is buttressed by a simple analysis of petitioner's citations put forward by him in support of his claim of substantiality.

Petitioner, in his brief here, seeks first to equate the alleged intrusion upon his mail box with search and seizure cases. The irrelevancy of these cases is handily disposed

of by Judge Learned Hand's observation in *United States* v. *Poller,* 43 F. 2d 911 (2d Cir. 1930), that

> "... it is only fair to observe that the real evil aimed at by the Fourth Amendment is the search itself, that invasion of a man's privacy which consists in rummaging about among his efforts to secure evidence against him."

The decision in *Berger* v. *New York,* 388 U. S. 41 (1967), cited by the petitioner here as well as *Camara* v. *Municipal Court,* 387 U. S. 523 (1967) and *See* v. *City of Seattle,* 387 U.S. 541 (1967), were simply further recognitions flowing from *Mapp* v. *Ohio,* 367 U. S. 643 (1961), that "the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth" Amendment *id.* at 655. But we have no quarrel with such proposition; we do, however, fail to see how search and seizure cases aid petitioner's cause.

Petitioner's citation of *Breard* v. *Alexandria,* 341 U. S. 622 (1951), is clearly of no aid to him. Although this Court there countenanced the state's power to limit door-to-door intrusions where the salesman corners "the quarry in his home and through his open door put[s] pressure on the prospect to purchase" (*id.* at 627), it specifically stated that "The usual methods of solicitation—radio, periodicals, *mail,* local agencies—are open" *id. at* 632 (emphasis supplied).

Similarly, *Public Utilities Commission* v. *Pollack,* 343 U. S. 451 (1952), a case involving radio broadcasting on public conveyances in the District of Columbia, does not further petitioner's cause. The appellant argues that two principles enunciated in that decision favor him: (a) this Court considered Pollack sufficiently important to warrant consideration by that Court and (b) the decision upholds the right to one's complete privacy in his home.

With respect to the first principle it should be noted that the federal Public Utilities Commission in *Pollack* specifically issued an order concluding that radio programming in public vehicles was neither an obstacle to safety of the operator nor would it improve the conditions under which the public rides. The Court, on the basis of this federal agency's approval, critically found "a sufficiently close relation between the Federal Government and the radio service to make it necessary . . . to consider those Amendments [claims of violation of First and Fifth Amendment rights]" *id.* at 462. But here the Commissioner of Motor Vehicles pursuant to the statute under attack simply sold a list of motor vehicle registrants to Polk & Co. Unlike the *Pollack* case neither the state statute nor the State Commissioner approved or disapproved what Polk & Co. did thereafter with its list.* Thus there is clearly no showing here of a sufficient government action to examine the applicability of the Fourteenth Amendment to the facts here. See *Public Utilities Commission* v. *Pollack, supra* at 463.

With respect to petitioner's reliance upon the statement in *Pollack* concerning the "complete right of privacy" in one's home, *id.* at 464, it is apparent from the tort law principles of right to privacy against intrusion which have, as noted above, sometimes been blessed by constitutional protection, that no such right has ever been intended to extend to the mail box. What is meant by the right of privacy in one's home was described by Mr. Justice Douglas' dissent in *Pollack*:

> "It gives the guarantee that a man's home is his castle beyond invasion either by inquisitive or by officious people." *Id.* at 467.

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* To be sure, petitioner, as observed above, does not even allege that the "crank" mail it received was traceable to Polk & Co. or to the Motor Vehicle lists purchased by that company.

The alleged noxious advertising resting in petitioner's mail box cannot be seriously said to infringe the guarantee that a man's home is his castle.

Finally, petitioner points to the recent decision of the Supreme Court in *Griswold* v. *Connecticut*, 381 U. S. 479 (1965). To argue that the sanctity of the marital bedroom is co-extensive with an alleged sanctity of the mail box demonstrates far beyond what we can possibly say here the insubstantiality of petitioner's assertions.

In essence, petitioner's complaint is not with the statute or any of the parties before this Court. His complaint is perhaps with the cheap bulk mail rates. We are all victims at some time of large volumes of advertising and junk mail, oftentimes emanating from local retailers and others hardly attributable to New York Vehicle & Traffic Law § 202(3).

(3)

Petitioner suggests that this case poses an additional issue never decided by this Court—whether a state has a right to grant a particular business concern a monopoly of communication with a large sector of the public. This contention is totally irrelevant to petitioner's claims in the Court below and furthermore is not consistent with the facts. As pointed out in the argument to the Circuit Court of Appeals, petitioner's "right to privacy" claim would be the same whether these records were available to 1 or 20 or 30 or more companies engaged in the same type of business. Further, there is nothing in the statute to prevent others from obtaining copies of filed registrations and finally, the contract between the Commissioner and Polk & Co. provides that Polk & Co. must sell upon request copies of the raw lists furnished by the State to any corporation, firm, partnership or individual at the prevailing rate that has been charged to others by Polk & Co. and that said rate shall be, in any event, no more than pro-

vided for in § 202(3) of the Vehicle & Traffic Law of the State of New York.

Petitioner's claim therefore that this statute is unconstitutional is wholly insubstantial and his complaint was properly dismissed.

CONCLUSION

The petition for certiorari should be denied.

Dated: New York, N. Y., April 26, 1968.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 1308

CORLISS LAMONT, on behalf of himself and all others similarly situated,

Petitioner,

—against—

COMMISSIONER OF MOTOR VEHICLES and R. L. POLK & CO.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Court of Appeals for the Second Circuit, reported at 386 F. 2d 449, is reprinted in the appendix to this brief at pages 1a-2a. The opinion of the District Court, reported at 269 F. Supp. 880, appears in the appendix to this brief at pages 3a-11a.

The judgment of the United States Court of Appeals for the Second Circuit was entered on December 12, 1967. Petitioner invoked the jurisdiction of this Court under 28 U. S. C. § 1254(1). The jurisdiction of the District Court was invoked by Petitioner under 28 U. S. C. §§ 1331, 1343(3), 2201, 2202, 2281, 2284, 42 U. S. C. § 1983, and

under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States.

STATUTES INVOLVED

Involved herein are § 202(3) and § 401(2) of the New York Vehicle and Traffic Law, and 28 U. S. C. §§ 2281 and 2284, the texts of which are reprinted in the appendix to this brief at pages 12a-15a.

QUESTION PRESENTED

Petitioner does not accurately set forth the question presented. The actual question presented is:

Were the Courts below correct in holding that no substantial constitutional question was presented by Petitioner's claim that his "right of privacy" is violated by the sale, pursuant to state statute, of motor vehicle registration information where:

(a) the motor vehicle registration forms in question are public records;

(b) the information contained in such records is neither sensitive nor intimate; and

(c) the "irreparable harm" claimed by Petitioner consists solely of the alleged receipt of advertisements by mail and of other commercial solicitations?

STATEMENT OF THE CASE

In this action, Petitioner seeks declaratory and injunctive relief, alleging that § 202(3) of the New York Vehicle and Traffic Law is invalid under the United States Constitution. The District Court held that Petitioner's claims were not substantial and dismissed the complaint. The

Court of Appeals for the Second Circuit unanimously affirmed the dismissal.

Only Petitioner's complaint was before the District Court on the application for a three-judge court. Petitioner advised the District Court on oral argument that he did not press his claim for preliminary injunctive relief. Both Petitioner and Respondent R. L. Polk & Co. then advised the Court that it should consider only the complaint and not the affidavits submitted in support of and in opposition to the claim for preliminary injunctive relief. Thus, insofar as Petitioner's "statement of the case" exceeds the allegations of his complaint, it is irrelevant for the purposes of this petition and no useful purpose would be served by a rebuttal. Such a detailed rebuttal is, in any event, unnecessary since the insubstantial nature of Petitioner's claim is apparent on its face.

Section 202(3) of the New York Vehicle and Traffic Law, challenged herein by Petitioner, has been in force in substantially the same form since 1940. That section permits the New York Commissioner of Motor Vehicles to contract with the highest responsible bidder to furnish copies of all motor vehicle registrations.*

The complaint alleges that this action is brought on behalf of Petitioner and all other registered motor vehicle owners in the State of New York. Respondents are the New York Commissioner of Motor Vehicles (hereinafter sometimes referred to as "the Commissioner") and R. L. Polk & Co. ("Polk"), a company alleged to be engaged, among other things, in publishing directories. The complaint alleges that the Commissioner has sold a current list of names of registered owners of New York motor vehicles to Polk, pursuant to § 202(3), and such information has

*A copy of the New York registration form is reprinted in the appendix to this brief, at pp. 16a-17a.

been used by Polk, directly or indirectly, to solicit the purchase of merchandise through the mails, by telephone or in person. Petitioner further alleges that these actions, and the provisions of § 202(3), violate the right of privacy of Petitioner and other registrants and deprive them of their liberty and property, under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution. Petitioner further contends that such actions have resulted in "considerable annoyance, inconvenience and damage to the plaintiff and other registrants by reason of the large volume of advertising and crank mail and other solicitation to which they are subjected," and that the injury thus sustained is "irreparable." Petitioner's complaint is reprinted in the appendix to this brief at pages 18a-21a.

Petitioner herein does not seek to invalidate the New York statutory provisions which make such registration forms public records, but only the section permitting the sale of registration information in bulk.

ARGUMENT

REASONS WHY THE WRIT SHOULD BE DENIED

The instant case presents no issue which merits the attention of this Court. Petitioner, unable to show any substantial injury or to cite any authority for his position, advances instead the sweeping proposition that the United States Constitution prohibits any state action which could be said to intrude upon Petitioner's "privacy". This argument was, however, squarely rejected by this Court at the present Term in *Katz* v. *United States*, 389 U. S. 347, where the Court held, at page 350:

> "Secondly, the Fourth Amendment cannot be translated into a general constitutional 'right to privacy.'

> That Amendment protects individual privacy against certain kinds of governmental intrusion, but its protections go further, and often have nothing to do with privacy at all. Other provisions of the Constitution protect personal privacy from other forms of governmental invasion. But the protection of a person's *general* right to privacy—his right to be let alone by other people—is, like the protection of his property and of his very life, left largely to the law of the individual States." (Original emphasis)

Moreover, there has not been, upon the facts alleged in the complaint, any invasion of Petitioner's "privacy." The information contained in the official motor vehicle registration form, such as name, address, make and model of vehicle, etc., is neither intimate nor confidential.* The registration data does not include any information related to religious or political affiliation, or any other sensitive matter like that involved in *NAACP* v. *Alabama*, 377 U. S. 288, and *Bates* v. *City of Little Rock*, 361 U. S. 516, cited at page 8 of the Petition.

The registration forms in question are, in any event, public records. Any person may obtain a copy of the data in question by paying the statutory fees, without any showing of cause or explanation of why the information is sought. New York Vehicle and Traffic Law § 401 (2). *Matter of Stenstrom* v. *Harnett*, 131 Misc. 75 (Sup. Ct. Albany Co. 1927), *aff'd* 224 App. Div. 127 (3d Dept. 1928), *aff'd* 249 N. Y. 606 (1928), incorrectly cited at page 3 of the Petition for the proposition that a showing of cause

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*Petitioner attempts to create a contrary impression by his reference, at Petition page 3, to a question pertaining to "certain criminal offenses." The section referred to by Petitioner inquires only as to traffic offenses, and need not be answered at all unless the applicant is requesting a special license number.

is required, actually holds the direct opposite. In *Harnett*, the New York court expressly held, at 131 Misc. 77:

> "In the case of public records, strictly speaking, all citizens have a right to resort to them, irrespective of their motives or interest. They may examine them to satisfy mere curiosity, or they may take transcripts from them for sale. (*People ex rel. German-American Loan & Trust Co.* v. *Richards*, 99 N. Y. 620.)"

Accord, Blandford v. *McClennan*, 173 Misc. 15, 18 (Sup. Ct. Erie Co. 1940).* Thus, Section 202(3) is in furtherance of the public policy of the State of New York to make not only motor vehicle registration records, but public records generally, available to any member of the public. (*See e.g.*, Public Officers Law § 66; Education Law § 146; *Mtr. of New York Post Corp.* v. *Leibowitz*, 2 N. Y. 2d 677, 686 (1957); *Fox* v. *City of New York*, 28 A. D. 2d 20 (1st Dept. 1967); *Matter of Werfel* v. *Fitzgerald*, 23 A. D. 2d 306 (2d Dept. 1965).)

It has long been established in other jurisdictions that such vehicle registration records are subject to bulk copying and sale. Despite Petitioner's attempt to imply (Petition, page 6) that such bulk sales are a recent development, dependent upon advances in computer techniques, similar operations have been carried on for more than thirty years. The right of a direct mailing company to make copies in bulk of vehicle records was expressly upheld in *Direct Mail Service* v. *Registrar of Motor Vehicles*, 5 N. E. 2d 545,

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*In this connection, it is significant to note that the Congress by the Act of July 4, 1966, 80 Stat. 250, amending Section 3 of the Administrative Procedure Act, has expanded the availability of federal agency records by now placing the burden upon the agency to justify a refusal to disclose such records.

296 Mass. 353 (1937), where the Court said at 5 N. E. 2d 546:

> "It is common knowledge that much use is made of public records for reasons having nothing to do with any present problem of the person examining them. Lists of conveyances, attachments, bankruptcies, building permits and other matters having their sources in the public records are regularly published in commercial journals which are sold to business men and to the public generally. Such use of the material contained in records often enhances their value to the community. We cannot believe that the Legislature intended to give to the custodian of a public record power to inquire of applicants for inspection as to the use which they intend to make of the information to be obtained or the motives which prompted them in seeking it. See Shea v. Parker, 234 Mass. 592, 126 N. E. 47. Nor do we see how the right to inspect records can be confined to certain selected entries or where the line can be drawn short of allowing inspection in proper time and manner of all the records, if inspection of all is desired. The right to inspect commonly carries with it the right to make copies without which the right to inspect would be practically valueless. Varney v. Baker, 194 Mass. 239, 241, 242, 80 N. E. 524, 10 Ann. Cas. 289; Powelson v. Tennessee Eastern Electric Co., 220 Mass. 380, 107 N. E. 997, Ann. Cas. 1917A, 102; Shea v. Parker, 234 Mass. 592, 126 N. E. 47; People v. Cornell, 47 Barb. (N. Y.) 329; Clay v. Ballard, 87 Va. 787, 13 S. E. 262. We see no reason why the right to make copies is not coextensive with the right to inspect. We believe that in general the public interest will be best served by the largest freedom in

> the use for lawful purposes of public records kept at the public expense. We conclude, therefore, that the rulings and order of the single justice were right."

Accord, State v. *Brown,* 345 Mo. 430, 134 S.W.2d 28 (1939).

The function performed by the state in supplying motor vehicle registration information in bulk was aptly described by the court below when it stated (at 269 F. Supp. 883-4):

> "The information sold by the Commissioner is not vital or intimate. It is, moreover, in the category of 'public records,' available to anyone upon demand. See Vehicle and Traffic Law § 401(2). Indeed, questions more troublesome than plaintiff's might arise if the State adopted a policy of 'privacy' or 'secrecy' with respect to such information. What the State has done in practical effect is to tap a small source of much-needed revenue by offering a convenient 'packaging' service. This may not be the most inspired kind of government function, although it may be noted that eighteen other States appear to have adopted similar practices. The point of importance, whatever aesthetic or other judgments might be prompted by this activity, is that it reflects a rational and allowable balancing of values by the elected representatives of the people." [Footnotes omitted.]

Clearly the inspection, copying and sale of motor vehicle registrations, individually or in bulk, does not infringe on petitioner's freedom of speech, violate due process or constitute an invasion of any "right of privacy". Rather, it reflects a legislative determination to make information

contained in governmental records accessible and available to the public and, at the same time, obtain revenue.*

Appellant also contends here that the sale of a copy of his motor vehicle registration by the Commissioner to Polk has resulted in his receiving so-called "crank" mail and other commercial solicitations, thereby causing him annoyance and inconvenience. Lacking any clear basis for jurisdiction, but apparently hoping to find support somewhere in the Constitution or the statutes, appellant cites seven statutes as well as the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution.

The cases relied on by appellant, however, rather than lending support to his novel claim, demonstrate instead that the claim is frivolous and insubstantial. The "privacy" decisions cited by appellant relate to physical intrusions on the person or dwelling, invasions of First Amendment freedoms or other equally grievous injuries. Thus, *Camara* v. *Municipal Court,* 387 U. S. 523 (cited at Petition, p. 8) involved an actual entry and search of the defendant's premises. Several of the other cases relied upon by Petitioner involved compulsory disclosure of information as to political associations involving threats of reprisal and consequent restrictions upon freedoms of speech and association. *Bates* v. *City of Little Rock,* 361 U. S. 516; *NAACP* v. *Alabama,* 377 U. S. 288 (cited at Petition, p. 8). *Sweezy* v. *New Hampshire,* 354 U. S. 234 (Petition, p. 8) involved an excessively broad legislative investigation with a consequent threat to academic freedom. *Boyd* v. *United States,*

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*Eighteen states have statutes similar to Section 202(3) of the New York Vehicle and Traffic Law and by statute in all states, with the exception of Kentucky, where no statute could be found, motor vehicle registrations are public records (Appendix, p. 9a). As judge Frankel noted, "This substantially uniform state practice is not decisive, but is another item of some weight against plaintiff's constitutional theory . . . ." (Appendix, p. 9a).

116 U. S. 616, was a case of self-incrimination involving the compulsory production by the defendant of his books and records in a customs fraud proceeding.

Of the cases cited by Petitioner, the closest to the present facts, *Public Utilities Commission* v. *Pollak,* 343 U. S. 451 (Petition, p. 8), is squarely contrary to his position here. That case held that the broadcasting on municipal streetcars of music and commercial announcements did not infringe the constitutional rights of the passengers. *A fortiori,* there is no such infringement in this case. Here appellant, if he chooses, can readily avoid exposure to the commercial solicitations complained of by the minimal effort involved in throwing away unwanted mail, hanging up the telephone, or turning away alleged door-to-door commercial solicitations. As the District Court correctly observed, at 269 F. Supp. 883:

> "The mail box, however noxious its advertising contents often seem to judges as well as other people, is hardly the kind of enclave that requires constitutional defense to protect 'the privacies of life.' The short, though regular, journey from mail box to trash can—for the contents of which the State chooses to pay the freight when it facilitates the distribution of trash—is an acceptable burden, at least so far as the Constitution is concerned. And the bells at the door and on the telephone, though their ring is a more imperious nuisance than the mailman's tidings, accomplish more peripheral assaults than the blare of an inescapable radio."

In an effort to lend some semblance of substantiality to his position, Petitioner has noted (Petition, p. 10) the pendency of one other law suit raising a similar claim. *Chapin* v. *Tynan,* No. 150994, Superior Court of Hartford

County, Connecticut, cited at Petition, page 10. However, since the filing of the Petition herein, the Connecticut court has rendered a decision dismissing the *Chapin* action on the merits.* The Court in *Chapin*, after noting the trivial nature of the "inconveniences and annoyances" alleged by plaintiff therein, squarely rejected the Constitutional argument, noting that:

> "The record is replete with evidence affording sufficient grounds for the existence of the laws under which the commissioner acted, particularly with reference to his contracting with the company. First of course is the tapping of a source of revenue, although it may not be the most inspired type of governmental function. *Lamont* v. *Commissioner of Motor Vehicles*, supra, 883. Other statistical data compiled by this 'in bulk' furnishing of names has, as disclosed by the company's experience, potential or actual value in instant recall of defective vehicles potentially dangerous to the public, determination of parts inventory, publication of city directories, assistance to governmental agencies and law enforcement officials. Indeed the plaintiff concedes a segment of the public welcomes the mail which he resents. Furthermore, this 'packaging' method is more convenient for the commissioner rather than the manual preparation of the records."

Petitioner's claim is, in fact, not a matter of "privacy" at all. There is here no unlawful dissemination of confidential or private information. There is, of course, no contention that Petitioner's person, premises, or effects have been subjected to any form of search. The gravamen

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*A copy of the opinion in *Chapin* v. *Tynan*, not yet reported, is reprinted in the appendix to this brief at pages 22a-31a.

of his complaint is simply that he is irritated at receiving unwanted mail or other commercial solicitation. Petitioner contends, in effect, that the United States Constitution absolutely prohibits any form of state action which might annoy Petitioner or disturb his complete mental repose. The courts below were clearly correct in holding this claim insubstantial.

Petitioner attempts to lend an appearance of substance to his case by general citations to articles which have discussed the dangers of unrestricted computer use of political, financial, and other highly sensitive data. Although petitioner repeatedly tries to obscure the fact, the only data involved here is that contained in public records which are available to anyone on request.

Finally, appellant's reliance on *Breard* v. *Alexandria*, 341 U. S. 622, is misplaced. *Breard* involved the right of a local government to *limit* house-to-house solicitation for certain commercial purposes. The court, in upholding the ordinance in question, observed (pp. 631-632) that "The usual methods of solicitation—radio, periodicals, mail, local agencies—are open." The holding of *Breard* is simply that legislative bodies may validly impose reasonable regulations upon certain types of commercial solicitation. Nothing in that case supports appellant's position that any such solicitation violates his constitutional rights.

The claims advanced by plaintiff with respect to freedom of speech and due process are equally insubstantial. The instant case involves merely the use of information which is neither sensitive nor intimate, which is already a matter of public record, and which already can be obtained by anyone through public sources without any intrusion into private affairs. The commercial solicitation complained of lacks any captive quality and has not been limited by the legislature.

As Judge Frankel concluded (269 F. Supp. 884):

> "His claim is in an area where there is no invidious discrimination, no problem of a wrong unreachable at the polls, no suggestion of an affliction confined to a relatively helpless minority. Cf. Reynolds v. Sims, 377 U. S. 533, 553, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964); West Virginia State Board of Education v. Barnette, 319 U. S. 624, 638, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943). His alleged injury, shared with what is probably a majority of the electorate, results from a judgment by the State which appears to be well within its 'vast leeway in the management of its internal affairs.' Sailors v. Board of Education, 387 U. S. 105, 109, 87 S. Ct. 1549, 1553, 18 L. Ed. 2d 650 (1967)."

In the light of the foregoing authorities, the District Court was clearly correct in dismissing the complaint as insubstantial. *Ex parte Poresky*, 290 U. S. 30. Where no substantial constitutional question is raised, the plaintiff is not entitled to have a three-judge court convened. *Offermann* v. *Nitkowski*, 378 F. 2d 22 (2d Cir. 1967); *Utica Mutual Insurance Company* v. *Vincent*, 375 F. 2d 129 (2d Cir. 1967), *cert. denied*, 389 U. S. 839; *Powell* v. *Workmen's Compensation Bd. of State of New York*, 327 F. 2d 131 (2d Cir. 1964); *Bell* v. *Waterfront Commission of New York Harbor*, 279 F. 2d 853 (2d Cir. 1960), cited with approval in *Bailey* v. *Patterson*, 369 U. S. 31, 33; *Sarisohn* v. *Appellate Div., Second Dep't., S. Ct. of St. of New York*, 265 F. Supp. 455 (E. D. N. Y. 1967). As stated by the Court in *Bailey*, at 369 U. S. 33:

> "Section 2281 does not require a three-judge court when the claim that a statute is unconstitutional is wholly insubstantial, legally speaking non-

existent. *Ex parte Poresky*, 290 U. S. 30; *Bell* v. *Warterfront Comm'n*, 279 F. 2d 853, 857-858. We hold that three judges are similarly not required when, as here, prior decisions make frivolous any claim that a state statute on its face is not unconstitutional. * * * The reasons for convening an extraordinary court are inapplicable in such cases, for the policy behind the three-judge requirement—that a single judge ought not to be empowered to invalidate a state statute under a federal claim—does not apply. The three-judge requirement is a technical one to be narrowly construed, *Phillips* v. *United States*, 312 U. S. 246, 251. The statute comes into play only when an injunction is sought 'upon the ground of the unconstitutionality' of a statute. There is no such ground when the constitutional issue presented is essentially fictitious."

Appellant's claim here that Section 202(3) of the New York Vehicle and Traffic Law is unconstitutional is wholly insubstantial, and his complaint was properly dismissed by the District Court.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

Opinion of Court of Appeals, Second Circuit

CORLISS LAMONT, on behalf of himself and all others similarly situated,

Plaintiff-Appellant,

v.

COMMISSIONER OF MOTOR VEHICLES and R. L. POLK & Co.,

Defendants-Appellees.

No. 205, Docket 31595

United States Court of Appeals
Second Circuit.

Argued Nov. 28, 1967.
Decided Dec. 12, 1967.

Appeal from an order of the United States District Court for the Southern District of New York, Marvin E. Frankel, J., denying appellant's motion to convene a three-judge court and granting appellees' motion to dismiss the complaint. Opinion below reported at 269 F. Supp. 880.

Leonard Boudin, New York City (Rabinowitz & Boudin, Victor Rabinowitz, New York City, David Rein, Washington, D. C., and Joan Goldberg, New York City, of counsel), for plaintiff-appellant.

Mortimer Sattler, New York City (Louis J. Lefkowitz, Atty. Gen., of the State of New York, Samuel A. Hirshowitz, First Asst. Atty. Gen., and Joel Lewittes, New York

City, of counsel), for defendant-appellee, Commissioner of Motor Vehicles.

Wyllys S. Newcomb, New York City (Royall, Koegel, Rogers & Wells, John M. O'Hara and Guy C. Quinlan, New York City, of counsel), for defendant-appellee, R. L. Polk & Co.

Before MOORE, SMITH and HAYS, Circuit Judges.

PER CURIAM:

We affirm for substantially the reasons contained in the opinion of Judge Frankel reported at 269 F. Supp. 880 (S. D. N. Y. 1967).

Opinion of United States District Court, Southern District of New York

CORLISS LAMONT, on behalf of himself and all others similarly situated,

Plaintiff,

v.

COMMISSIONER OF MOTOR VEHICLES and R. L. POLK & Co.,

Defendants.

No. 67 Civ. 1540.

United States District Court
S. D. New York.
June 22, 1967.

Rabinowitz & Boudin, New York City, for plaintiff; Leonard B. Boudin, Joan Goldberg, New York City, of counsel.

Louis J. Lefkowitz, Atty. Gen. of State of New York, New York City, for defendant, Commission of Motor Vehicles; Mortimer Sattler, Asst. Atty. Gen., of counsel.

Royall, Koegel, Rogers & Wells, New York City, for defendant, R. L. Polk & Co.; Wyllys S. Newcomb, John M. O'Hara, Russell H. Beatie, Jr., New York City, of counsel.

OPINION

FRANKEL, District Judge.

Suing for himself "and all other owners of motor vehicles duly registered" in New York, plaintiff seeks declaratory and injunctive relief based upon the asserted unconstitutionality of N. Y. Vehicle and Traffic Law, Mc-

Kinney's Consol. Laws, c. 71, § 202(3), which provides that the Commissioner of Motor Vehicles

> "may, in his discretion, contract with the highest responsible bidder to furnish copies of records of all vehicle registrations for any registration period, or number of periods not exceeding five years in the aggregate, with respect to a given territory. In such event, the fees provided by this section [for searching and supplying copies of such records] shall not apply to copies of records furnished under any such contract."

The defendants are the Commissioner of Motor Vehicles and R. L. Polk & Co., which is said to be in the business, *inter alia*, of compiling directories and is alleged to have acquired the registration records as "the highest responsible bidder" under the statute. In addition to seeking a declaration that § 202(3) is unconstitutional under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments, along with an injunction "restraining the enforcement and operation" of the statute, plaintiff asks for a judgment of $10,000 against defendant Polk. The court's jurisdiction is said to rest upon 28 U. S. C. §§ 1331, 1343(3), 2201, 2202, 2281, and 2284; 42 U. S. C. § 1983; and the foregoing Amendments to the Federal Constitution.

Plaintiff has moved for the convening of a three-judge court under 28 U. S. C. §§ 2281 and 2284.[1] Defendants

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[1]Plaintiff's motion papers also request a preliminary injunction, but it was stated upon argument that this application is not being pressed at this time, pending the ruling on whether a three-judge court is appropriate.

oppose the motion, urging that the asserted constitutional issue is "plainly unsubstantial," Ex parte Poresky, 290 U. S. 30, 32, 54 S. Ct. 3, 78 L. Ed. 152 (1933); cf. Bailey v. Patterson, 369 U. S. 31, 82 S. Ct. 549, 7 L. Ed. 2d 512 (1962), and that the complaint should, accordingly, be dismissed by a single judge.

The allegations generating these opposing views—taken as true, of course, for present purposes—are: that plaintiff and others like him are compelled to register their motor vehicles with the Commissioner; that defendant Polk, having acquired the registration records, uses the names itself, or sells or leases the lists to others, "for the solicitation through the mails, by telephone and in person, of the registered owners of vehicles, for the purchase of merchandise;" and that the result has been "considerable annoyance, inconvenience and damage to the plaintiff and other registrants by reason of the large volume of advertising and crank mail and other solicitation to which they are subjected." Defendants' actions and the provisions of § 202(3), the complaint concludes, "are in violation of the right of privacy of the plaintiff and other registrants, and constitutes [*sic*] deprivation of their liberty and property under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution."[2]

In support of the view that the constitutional issue he raises is sufficiently substantial to warrant the attention

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[2]There is no allegation that plaintiff has demanded exclusion of his name from the list sold by the Commissioner. In response to the court's inquiry, the State Attorney General has taken the position that this is immaterial in any event. With that representation, the question is treated on the premise that such a demand by the plaintiff would have been futile.

of a three-judge court, plaintiff's able counsel presents written argument which reads in its entirety as follows:

> "The substantiality of the constitutional question raised by the complaint in this case is shown by the recent cases dealing with the sanctity of a man's home and the privacies of life. Griswold v. Conn., 381 U. S. 479 [85 S. Ct. 1678, 14 L. Ed. 2d 510]; Mapp v. Ohio, 367 U. S. 643 [81 S. Ct. 1684, 6 L. Ed. 2d 1081]; Breard v. [City of] Alexandria, 341 U. S. 622 [71 S. Ct. 920, 95 L. Ed. 1233]; Public Utilities Comm'n v. Pollack [*sic*], 343 U. S. 451 [72 S. Ct. 813, 96 L. Ed. 1068]; Monroe v. Pape, 365 U. S. 167 [81 S. Ct. 473, 5 L. Ed. 2d 492]; Frank v. [State of] Maryland, 359 U. S. 360 [79 S. Ct. 804, 3 L. Ed. 2d 877]; Skinner v. [State of] Oklahoma, 316 U. S. 535 [62 S. Ct. 1110, 86 L. Ed. 1655]."[3]

To be sure, brevity, a somewhat rare delight in courthouses, is not to be discouraged by equating it with "unsubstantiality." It should also be observed that counsel argued engagingly, and at considerably greater length, in oral support of the view that expanding judicial concern for "the privacies of life" shows enough movement in the law to preclude dismissal of his complaint as frivolous. In the end, however, plaintiff's single sentence of written argument, followed by the citation of seven cases, among which one hurts him and six are inapposite, may fairly be taken as the legal measure of his novel claim.

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[3]Plaintiff's Memorandum of Law, pp. 5-6.

It would be pedantic to linger over the many distinctions between this case and those involving searches and seizures (Mapp v. Ohio, supra; Monroe v. Pape, supra; cf. Frank v. State of Maryland, supra[4]), the sanctity of the marital relationship (Griswold v. Connecticut, supra), the power of States to *limit* solicitation (Breard v. City of Alexandria, supra), and laws for compulsory sterilization (Skinner v. State of Oklahoma, supra). The citation closest to the mark in plaintiff's list is Public Utilities Comm'n v. Pollak, and that is adverse to him. There, the dispute was over governmental approval of radio broadcasts, including commercial messages, to the captive audiences in publicly franchised buses and street cars. The intrusive assault upon the privacy and serenity of unwilling listeners forced to use public conveyances was so jangling to one normally hardy "victim" on the Supreme Court that he found himself unable to rule dispassionately upon the constitutional issue. 343 U. S. at 466-467, 72 S. Ct. at 822-823 (Frankfurter, J.). The Court majority pointedly recorded (p. 465, 72 S. Ct. p. 822) its expression of "no opinion as to the desirability of radio programs in public vehicles." The Court then proceeded, however, to reject the claim that the outraged listeners could invoke the right of privacy or other constitutionally protected interests to shut out the radio broadcasts. Mr. Justice Black dissented in part on grounds that give little or no comfort to the plaintiff in this case. The dissent of Mr. Justice Douglas, centering on the right of privacy, distinguished "the man on the streetcar," forced to hear the broadcasts, from the person at home who is free to turn

[4]Overruled in Camara v. Municipal Court, 387 U. S. 523, 87 S. Ct. 1727, 1741, 18 L. Ed. 2d 930 (1967).

off or away from an offensive program. Id. at 469, 72 S. Ct. 813.

Strictly speaking, that decision is not squarely in point. It contains important implications, however, that lead *a fortiori* to the defeat of this plaintiff's claim. There is no captive quality in the plight of which plaintiff complains. The mail box, however noxious its advertising contents often seem to judges as well as other people, is hardly the kind of enclave that requires constitutional defense to protect "the privacies of life." The short, though regular, journey from mail box to trash can—for the contents of which the State chooses to pay the freight when it facilitates the distribution of trash—is an acceptable burden, at least so far as the Constitution is concerned. And the bells at the door and on the telephone, though their ring is a more imperious nuisance than the mailman's tidings, accomplish more peripheral assaults than the blare of an inescapable radio.

The information sold by the Commissioner is not vital or intimate. It is, moreover, in the category of "public records," available to anyone upon demand. See Vehicle and Traffic Law § 401(2). Indeed, questions more troublesome than plaintiff's might arise if the State adopted a policy of "privacy" or "secrecy" with respect to such information.[5] What the State has done in practical effect is to tap a small source of much-needed revenue by offering a convenient "packaging" service. This may not be the most

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[5]Compare the Act of July 4, 1966, 80 Stat. 250, amending Section 3 of the Administrative Procedure Act to expand the availability of agency records and providing, *inter alia*, that "the burden shall be upon the agency to sustain its action" when it resists disclosure.

inspired kind of government function, although it may be noted that eighteen other States appear to have adopted similar practices.[6] The point of importance, whatever aesthetic or other judgments might be prompted by this activity, is that it reflects a rational and allowable balancing of values by the elected representatives of the people.

In his contrary thesis, plaintiff proposes to stretch the constitutional dimensions of "privacy" far beyond any reasonably foreseeable limits the courts ought to enforce. His claim is in an area where there is no invidious discrimination, no problem of a wrong unreachable at the polls, no suggestion of an affiliction confined to a relatively helpless minority. Cf. Reynolds v. Sims, 377 U. S. 533, 553, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964); West

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[6]Cal. Vehicle Code Ann. § 1811 (West Supp. 1966); Conn. Gen. Stat. Rev. § 14-49 (r) (1958); Fla. Stat. § 319.25(5) (a), F. S. A. (1965); Ill. Rev. Stat. ch. 95½, § 3-418 (1959); Ind. Ann. Stat. § 47-2625 (Burns' Replacement 1965); Mich. Comp. Laws Ann. § 257.232 (1967); Minn. Stat. Ann. § 168.33, Subd. 3 (1960); Mont. Rev. Codes Ann. § 53-101(8) (1947); Ohio Rev. Code. Ann. § 4503.26 (Page 1965); Okla. Stat. Ann. tit. 47, § 22.24 (1962); Pa. Stat. Ann. tit. 75, § 417 (1960); S. C. Code Ann. § 46-120 (1962); Gen. & Special Laws of Texas, Chap. 720 § 36 of H. B. 12 (59th Legislature 1965) and Minute Order of Texas Highway Commission pursuant thereto dated February 16, 1966; Utah Code Ann. §§ 41-1-60 (Supp. 1965), 41-1-61 (1953); Vt. Stat. Ann. tit. 23, § 109 (1959); Va. Code Ann. § 46.1-32 (1967); W. Va. Code Ann. § 1721 (140) (1961); Wis. Stat. Ann. § 341.17 (Supp. 1967).

Defendant Polk, in an undisputed compilation of statutes which need not be reproduced here, reports its finding of provisions in every State except Kentucky making public records of vehicle registration information. The substantially uniform state practice is not decisive, but it is another item of some weight against plaintiff's constitutional theory. Cf. McGowan v. State of Maryland, 366 U. S. 420, 497, 81 S. Ct. 1153, 6 L. Ed. 2d (1961) (opinion of Mr. Justice Frankfurter); Green v. Board of Elections, 380 F. 2d 445 (2d Cir. 1967).

Virginia State Board of Education v. Barnette, 319 U. S. 624, 638, 63 S. Ct. 1178, 87 L. Ed 1628 (1943). His alleged injury, shared with what is probably a majority of the electorate, results from a judgment by the State which appears to be well within its "vast leeway in the management of its internal affairs." Sailors v. Board of Education, 387 U. S. 105, 109, 87 S. Ct. 1549, 1553, 18 L. Ed. 2d 650 (1967).

Of course, the fact that a claim is novel does not in itself brand it as unsubstantial. Cf. Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123, 159 71 S. Ct. 624, 95 L. Ed. 817 (Frankfurter, J., concurring). The nonmathematical task of the single judge in a case like this is to decide only whether the contention has some plausible chance of success, arguably sufficient to warrant full-scale consideration in the Supreme Court on an appeal as of right from a three-judge district court. Perhaps "unsubstantiality" need not be so plain when a single judge dismisses as it should probably be when a single judge finds the *defense of constitutionality* frivolous (Bailey v. Patterson, supra) and then enjoins enforcement of the state statute. In the latter situation, the protection of three-judge deliberation is withheld though the case is squarely within the primary purpose of the scheme—"that a single judge ought not to be empowered to invalidate a state statute under a federal claim * * *." Id., 369 U. S. at 33, 82 S. Ct. at 551, 7 L. Ed. 2d 512; and see Green v. Board of Elections, supra, 380 F. 2d at 452. But where, as in this case, a single judge finds the plaintiff's contentions plainly unsubstantial, the normally less major consequence of error is at most to postpone invalidation of the State's law. And

that, in the circumstances of this case, is a bearable possibility.

For the reasons above stated, the motion to convene a three-judge court is denied. The motions to dismiss the complaint are granted. The complaint is dismissed.

So ordered.

Statutes Involved

New York Vehicle and Traffic Law, § 202(3)

3. Fees for copies of records and documents. The fees for copies or records and documents, other than accident reports, shall be as follows: Written or typewritten copies, twenty-five cents per folio, with a minimum of one dollar. Negative photostatic copies, fifty cents per page not exceeding twenty-four square inches in area and one dollar per page in all other cases. The fee for a positive photostatic copy shall be double the fee for a negative photostatic copy. The fee for a negative photostatic copy of an accident report shall be two dollars. The fee for a positive copy of such a report shall be three dollars and fifty cents. If certification of a copy of a record or document is required, there shall be an additional fee of fifty cents.

The commissioner may, in his discretion, contract with the highest responsible bidder to furnish copies of records of all vehicle registrations for any registration period, or number of periods not exceeding five years in the aggregate, with respect to a given territory. In such event, the fees provided by this section shall not apply to copies of records furnished under any such contract.

New York Vehicle and Traffic Law, § 401(2)

2. Registration record. Upon the receipt of a sufficient application for registration of a motor vehicle or trailer, as provided in this article, the commissioner, or the agent receiving it, shall register such motor vehicle or trailer and maintain a record of the registration of such vehicle under the distinctive number assigned to such motor vehicle or trailer as provided in this section, and the information in

such record may be obtained upon payment of the fees specified in section two hundred two of this chapter.

28 U. S. C. §§ 2281, 2284

§ 2281. Injunction against enforcement of State Statute; three-judge court required

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

§ 2284. Three-judge district court; composition; procedure

In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action involves the enforcement, operation or execution of State statutes or State administrative orders, at least five days notice of the hearing shall be given to the governor and attorney general of the State.

If the action involves the enforcement, operation or execution of an Act of Congress or an order of any department or agency of the United States, at least five days' notice of the hearing shall be given to the Attorney General of the United States, to the United States attorney for the district, and to such other persons as may be defendants.

Such notice shall be given by registered mail or by certified mail by the clerk and shall be complete on the mailing thereof.

(3) In any such case in which an application for an interlocutory injunction is made, the district judge to whom the application is made may, at any time, grant a temporary restraining order to prevent irreparable damage. The order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the full court. It shall contain a specific finding, based upon evidence submitted to such judge and identified by reference thereto, that specified irreparable damage will result if the order is not granted.

(4) In any such case the application shall be given precedence and assigned for a hearing at the earliest practicable day. Two judges must concur in granting the application.

(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of

civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon ten days notice served upon the attorney general of the State.

PRINT ALL ENTRIES (USE BLUE OR BLACK INK)

1. LAST NAME | FIRST | M | DATE OF BIRTH | SEX | IF LICENSED, FILL IN NEW YORK MOTORIST (LICENSE) IDENT. NO.

2. LAST NAME (IF TWO OWNERS) | FIRST | M | DATE OF BIRTH | SEX | IF LICENSED, FILL IN NEW YORK MOTORIST (LICENSE) IDENT. NO.

LEGAL RESIDENCE - STREET AND NUMBER | CITY | POST OFFICE | STATE | ZIP CODE | COUNTY

DOES REGISTRANT HAVE A N. Y. STATE DRIVER'S LICENSE? YES ☐ NO ☐

SOCIAL SECURITY NUMBER OF FIRST OWNER OR FEDERAL EMPLOYER'S IDENT. NUMBER

SOCIAL SECURITY NO. OF SECOND OWNER (IF ANY)

YEAR & MAKE OF VEHICLE | BODY TYPE | ☐ GAS ☐ DIESEL ☐ ELECTRIC | CURRENT INSURANCE COMPANY (NOT AGENT)

VEHICLE IDENTIFICATION NO. | CYL. | WEIGHT | INSURANCE POLICY NO. | COLOR-(SEE REVERSE FOR STANDARD LIST)

SPC. CHG. | ANNUAL FEE | TOTAL PD.

PLATE NO. | EXPIRATION DATE

STICKER NO.

FEE	
CREDIT	
DIFF.	
RE-REG.	
TOTAL	

PART 1

IF YOU ARE THE OWNER(S) AND PAY A SPECIAL CHARGE, HAVE YOU BEEN CONVICTED FOR SPEEDING, RECKLESS OR DANGEROUS DRIVING, OR ANY VIOLATION REQUIRING THE REVOCATION OF YOUR DRIVER'S LICENSE DURING THE PAST 18 MONTHS? ☐ YES ☐ NO

THIS VEHICLE LAST REGISTERED | STATE | YR. | PLATE NO.

EXAMINED BY

STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES
REGISTRATION

PASSENGER OR SUBURBAN

I CERTIFY THAT: (1) The information given on this application is true. (2) There are no unsatisfied judgments against me as a result of a Motor Vehicle accident. (3) The registration is not currently under suspension or revocation. (4) The vehicle is fully equipped in accordance with the requirements of the Vehicle and Traffic Law. (5) This vehicle will not be used to carry passengers for hire. (6) There are no outstanding orders against me under the Financial Security Act.

X

Sign name in full. If not individual owner, give title. (OVER) MV-639.1 (12/66)

Employer's Name | Street & Number | City | Zip Code | State

RENEWAL—If your preprinted renewal application is for a vehicle that you no longer own wait until the 10th of your expiration month before renewing your registration on this form as you may receive another application.

Renew this registration by mail or in person at your nearest Motor Vehicle Issuing Office.

Submit completed application, your present registration renewal (Part 4) and fee.

NEW VEHICLE—Submit completed application, proof of ownership, certificate of insurance (Form FS-1) and fee with an original registration. To transfer your registration to another vehicle, submit your present registration (Part 3), completed application, proof of new ownership, and fee.

PAYMENT—Make checks or money orders payable to "Commissioner of Motor Vehicles". Do not mail cash or stamps. Third party checks are not acceptable.

INSPECTION—Evidence must be presented that a motor vehicle subject to inspection has passed such inspection.

PART 1

PROOF OF OWNERSHIP—SUBMIT ONE

1. State of New York Registration Renewal, (Part 4), properly filled out and signed by former owner.
2. State of New York Dealers Certificate of Sale (Form MV-50).
3. Certificate of Title issued by a Title State, or a registration from a Non-title State.
4. Notarized Bill of Sale from out-of-state dealer with certification of the dealer by the Motor Vehicle Authority of that State.
5. A Tax Clearance Certificate — Sale of Motor Vehicle (Form ST-170) is required with items 1, 3 and 4 above.

FINANCIAL SECURITY

1. You are required to maintain proof of financial security, usually a certificate of insurance (Form FS-1), with the Commissioner of Motor Vehicles continuously during the period of registration.
2. Original registrations require an FS Form.
3. Reregistrations require a new FS Form.
4. Renewals processed after the expiration date of the registration require a new FS-1 Form.

SIGNATURE

1. Parts 1, 3, and 4 of this application must be signed.
2. Married woman—Must sign her own first name.
3. Partnership or joint ownership—Enter both names on Parts 1, 2, 3, 4. Enter other owners on Form MV-251, obtainable at any Motor Vehicle or County Clerk Office.
4. Business or trade name—Should not be used. Show only name(s) of the owner(s).
5. Corporation—Must be signed by an officer or a person authorized by power of attorney.

LIST OF STANDARD COLORS

These colors may be modified by use of the terms light or dark. In the case of two tone vehicles enter both colors. Enter color of vehicle on face of application.

Black	Gold	Maroon	Purple	White
Blue	Grey	Orange	Red	Yellow
Brown	Green	Pink	Tan	

SOCIAL SECURITY NUMBER

Enter Social Security Number if vehicle is owned by an individual, partnership or a joint ownership.

Enter Federal employer's identification number if vehicle is owned by a corporation.

PASSENGER OR SUBURBAN RENEWAL

EXPIRATION DATE | SPC. CHG. | PLATE NO.

ANN. FEE | TOTAL FEE PAID

YEAR & MAKE OF VEHICLE | BODY TYPE | WEIGHT

VEHICLE IDENT. NO. | CYL. | COLOR

1 LAST NAME | FIRST | M

2 LAST NAME | FIRST | M

1 ADDRESS

X

Sign full name. If not individual owner, give title.

STICKER NO.

STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES
PART 4

PASSENGER OR SUBURBAN REGISTRATION

EXPIRATION DATE | SPC. CHG. | PLATE NO.

ANN. FEE | TOTAL FEE PAID

YEAR & MAKE OF VEHICLE | BODY TYPE | WEIGHT

VEHICLE IDENT. NO. | CYL. | COLOR

1 LAST NAME | FIRST | M

2 LAST NAME | FIRST | M

1 ADDRESS

X

Sign full name. If not individual owner, give title.

STICKER NO.

STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES
PART 3

PASSENGER OR SUBURBAN CONTROL

EXPIRATION DATE | PLATE NO.

YEAR & MAKE OF VEHICLE | BODY TYPE | WEIGHT

VEHICLE IDENT. NO. | COLOR

1 LAST NAME | FIRST | M

2 LAST NAME | FIRST | M

1 ADDRESS

EMPLOYER AND BUSINESS ADDRESS

STICKER NO.

STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES
PART 2

New York Motor Vehicle Registration Form (MV-639.1)

New York Motor Vehicle Registration Form (MV-639.1)

CHANGE OF ADDRESS AND TRANSFER

You must notify the Department within 10 days, on Form MV-232, which may be obtained at any Motor Vehicle Office. Enter new address below:

_____

_____

FOR TRANSFER USE THIS PART

To dispose of this vehicle check disposition and fill in all the information requested below.

Inspection Stamp

DATE OF DISPOSITION _____

☐ Transferred ☐ Destroyed
☐ Vehicle permanently removed from the State
☐ Registered dealer, returned to stock
☐ Stolen; right, title and interest sold

TRANSFERRED TO: _____

OWNER'S STATEMENT: I am the owner of the vehicle described on the reverse side, or a member of the firm or officer of the corporation owning same and have disposed of the vehicle as shown above.

SIGNATURE _____
Seller, sign name in full

PART 4

FOR CREDIT FEE USE THIS PART

Surrender your plates, sticker, and registration certificates (Parts 3 and 4) to a Motor Vehicle Office before you cancel your Liability Insurance to avoid revocation.

Allowable only toward a reregistration. You must be the owner shown on the reverse. To obtain allowance, check disposition of the vhelcle and fill in all the information requested below.

DATE OF DISPOSITION _____

Inspection Stamp

☐ Transferred ☐ Destroyed
☐ Vehicle permanently removed from the State
☐ Registered dealer, returned to stock
☐ Stolen; right, title and interest sold

TRANSFERRED TO: _____

OWNER'S STATEMENT: I am the owner of the vehicle described on the reverse side, or a member of the firm or officer of the corporation owning same and have disposed of the vehicle as shown above.

SIGNATURE _____
Seller, sign name in full

PART 3

MOTOR VEHICLE OFFICES

All County Clerk Offices issue Motor Vehicle registrations except the counties of New York, Queens, Kings, Bronx, Richmond and Albany. In these counties registrations may be obtained at the following Motor Vehicle District Offices:

NEW YORK
141-155 Worth Street
New York, New York 10013

QUEENS
89-01 Sutphin Boulevard
Jamaica, New York 11435

KINGS
333 Schermerhorn Street
Brooklyn, New York 11217

BRONX
2265 E. Tremont Avenue
Bronx, New York 10462

RICHMOND
450 St. Mark's Place
Staten Island, New York 10301

ALBANY
135 Ontario Street
Albany, New York 12206

SPECIAL REGISTRATIONS

Mail Special Registrations to:
Commissioner
NYS Department of Motor Vehicles
135 Ontario Street
Albany, New York 12206

PART 2

Petitioner's Complaint in the District Court

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CORLISS LAMONT, on behalf of himself and all others similarly situated,

Plaintiff,

—against—

COMMISSIONER OF MOTOR VEHICLES and R. L. POLK & Co.,

Defendants.

Plaintiff for his complaint alleges:

1. Jurisdiction of the Court arises under 28 U. S. C. §§ 1331, 1343(3), 2201, 2202, 2281, 2284; 42 U. S. C. § 1983, and under the Constitution of the United States and, in particular, under the First, Fourth, Fifth, Ninth and Fourteenth Amendments thereto.

2. The plaintiff is a resident of the City, County and State of New York and brings this action on behalf of himself and all other owners of motor vehicles duly registered under New York Vehicle and Traffic Law § 401. The number of owners of registered motor vehicles is so great that it is impracticable to bring them all before this Court; there are questions of law and fact presented herein which are common to the entire class of persons registered under said Vehicle and Traffic Law; the plaintiff's claim is typical of the claims of the class; the plaintiff will fairly and adequately protect the interests of the class.

3. The defendant, Commissioner of Motor Vehicles of the State of New York (herein called the "Commis-

sioner") is in charge of the Motor Vehicle Department pursuant to New York Vehicle and Traffic Law § 200.

4. Section 202(3) of said Vehicle and Traffic Law provides that the Commissioner may

> "in his discretion, contract with the highest responsible bidder to furnish copies of records of all vehicle registrations for any registration period, or number of periods not exceeding five years in the aggregate, with respect to a given territory. In such event, the fees provided by this section shall not apply to copies of records furnished under any such contract."

5. Defendant, R. L. Polk & Co. (herein called "Polk") is a corporation organized under the laws of the State of Delaware, doing business in the State of New York at 551 Fifth Avenue, New York City, and duly licensed to do so. It is engaged in the business of compiling, preparing, editing, publishing directories, reference books and so forth.

6. Plaintiff and those for whom he sues have duly registered their motor vehicles under the said § 401 which requires that "No motor vehicle shall be operated or driven upon the public highways of this state without first being registered in accordance with the provisions of this article. . . ."

7. Upon information and belief, the defendant Commissioner has sold and delivered the current list of names of registered owners of motor vehicles to defendant Polk pursuant to § 202(3) of the said Vehicle and Traffic Law, and will continue to sell said list to defendant Polk or to

the highest bidder unless ordered to cease and desist from such sales.

8. Upon information and belief, Polk in turn uses the said names as a basis for the solicitation through the mails, by telephone and in person, of the registered owners of vehicles, for the purchase of merchandise; the said solicitation is done either by Polk directly or by those to whom it sells or leases the said names of registered owners.

9. The aforesaid actions of the defendants, and the provisions of § 202(3) are in violation of the right of privacy of the plaintiff and other registrants, and constitutes deprivation of their liberty and property under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution.

10. The said operation of the statute and the defendants' conduct pursuant thereto has resulted in considerable annoyance, inconvenience and damage to the plaintiff and other registrants by reason of the large volume of advertising and crank mail and other solicitation to which they are subjected.

11. The plaintiff has been individually damaged in an amount exceeding $10,000 as a result of such action by the defendants under the said statute.

12. Plaintiff has suffered and continues to suffer immediate serious and irreparable injury by reason of the operation and enforcement of said statute.

13. Plaintiff has no adequate remedy at law.

Petitioner's Complaint in the District Court

WHEREFORE, plaintiff prays for the following relief:

A. That pursuant to 28 U. S. C. §§ 2281 and 2284, a three-judge federal district court be immediately convened to hear and determine plaintiff's application for preliminary and permanent injunction.

B. That a declaratory judgment issue declaring that § 202(3) of the New York Vehicle and Traffic Law is null and void as violative of the Constitution of the United States.

C. That a permanent injunction issue restraining the enforcement and operation of § 202(3) as unconstitutional and restraining the defendant Commissioner from selling the list of names of owners of motor vehicles under § 202(3), and restraining the defendant Polk and those in privity with it from selling or otherwise using said list of registered owners.

D. That judgment against defendant Polk be entered in the sum of $10,000, together with the costs of this action.

RABINOWITZ & BOUDIN

By .....
Leonard B. Boudin
Attorneys for Plaintiff
30 East 42nd Street
New York, N. Y. 10017

Opinion of Superior Court of Hartford County, Connecticut in *Chapin v. Tynan*

No. 150994

NORMAN S. CHAPIN

vs.

JOHN J. TYNAN, COMMISSIONER OF MOTOR VEHICLES OF THE STATE OF CONNECTICUT, ET AL.

April 25, 1968

MEMORANDUM OF DECISION

The plaintiff is duly licensed by the State of Connecticut to operate a motor vehicle owned by him and registered under the laws of the State of Connecticut. Prior to the issuance of a temporary injunction obtained by the plaintiff, reference to which will be made hereafter, the State of Connecticut, acting through the defendant Commissioner of Motor Vehicles, (hereinafter referred to as "the commissioner") furnished the defendant R. L. Polk and Company (hereinafter referred to as "the company") microfilm copies of all new registrations and transfers of registrations on a twice-weekly cycle and back-up magnetic tape records of the entire alphabetic registration file on an annual basis. The evidence clearly discloses that as a result of the registration data furnished the company by the commissioner, the plaintiff has received two pieces of mail in which he had no interest from third parties to whom the company furnished the information and a third communication, likewise unwanted by the plaintiff, from a

source that directly or indirectly received the plaintiff's name and address from the commissioner's disclosure of the registration or license records pertaining to the name and address of the plaintiff. The plaintiff is required to list his name and address with the commissioner or face a suspension of his license and revocation of his registration.

The State of Connecticut has received $15,000 annually for the furnishing of the information under a contractual agreement entered into by the commissioner and the company.

While this action is being maintained by the plaintiff in an individual capacity (in contrast to representative), the commissioner has deemed it prudent to cease furnishing the company registration information completely although the temporary injunction restrained further disclosure of information relating to the plaintiff only. The plaintiff by these proceedings seeks to make that injunction permanent. Succinctly stated, the plaintiff's claim is that the sale of this information is unauthorized under the statutes of this state and that if authority is construed to be granted by virtue of #14-49(r) of the General Statutes, that statute permits the invasion of his privacy and thus is unconstitutional, the basis of this averment being that he will suffer irreparable injury by being subjected to the receipt of unwanted mail and commercial solicitation.

At the threshold, our inquiry must be directed to the question as to whether the evidence supports a basis for the claim that there has been a violation of the plaintiff's right of privacy, that is whether he has standing to attack the constitutionality of the statute. *Coyle* v. *Housing Authority,* 151 *Conn.* 421, 424; *Hardware Mutual Casualty*

Co. v. *Premo,* 153 Conn. 465, 470, 471. One who suffers no injury by the operation of a statute will not be heard to claim that it is unconstitutional. *Carroll* v. *Socony-Vacuum Oil Co.,* 136 Conn. 49, 60.

The plaintiff's claim that he is threatened with an invasion of his right of privacy is of course the crux of his complaint that he will suffer irreparable injury, which injury must be proven to entitle him to injunctive relief. *Riley* v. *Liquor Control Commission,* 153 Conn. 242, 247. With reference to the latter, since the injunctive process is a harsh remedy, to justify its issuance, the injury must be substantial, not merely technical and there must be not only a violation of the plaintiff's rights, but a violation that will be attended with serious damage unless the injunction is issued. *Crouchley* v. *Pembianchi,* 152 Conn. 224, 227.

That this state recognizes the violation of privacy as affording a valid cause of action is now accepted. *Horn* v. *Rennison,* 21 Conn. Sup. 400; *Steding* v. *Battistoni,* 3 Conn. Cir. 76; *Carey* v. *Statewide Finance Co.,* 3 Conn. Cir. 716. This mode of redress requires a demonstration that a person unreasonably and seriously interfered with another's interest in not having his affairs known to others. The defendant's conduct must be offensive to persons of ordinary sensibilities, and in the determination of this, the habits of the plaintiff with reference to publicity are considered. Restatement of the Law, Torts, #867.

The right to privacy has been defined as "the right to be let alone". 4 Harvard Law Review 193, Warren and Brandeis. Relative considerations are necessarily involved in each case in any determination as to the impact of the alleged offensive conduct. While the legal standard—that

the conduct be offensive to persons of ordinary sensibilities—remains constant, yet whether there has been a bruising of those sensibilities remains a question of fact, i.e. whether the conduct is offensive. Activity which a Greta Garbo personality (with a passion for seclusion and an inordinate desire to remain incognita) would resent as an intrusion upon her privacy, might be welcomed by an extraverted, gregarious, and ambitious young starlet.

Prior to the institution of the instant action, during its pendency, and practically up to the time of trial, the plaintiff has encouraged and promoted publicity via interviews for television and newspapers. His posed picture has been published in newspapers. He had made trips to newspaper offices and a New York television station office with his family to publicize his cause. His modus operandi is completely incongruous with his position that his right of privacy —the right to be let alone—has been intruded upon. His readiness to bask in the sun of publicity generated by his cause celebre does not demonstrate that the receipt of three pieces of mail advertising men's clothing, seat covers, and leather goods, has been offensive to him, especially when one considers that as a result of the publicity promulgated by him, he has been receiving more mail from other sources. The information sold is not intimate. Nor is the mail received offensive. The requisite proof to support a claim of invasion of privacy is lacking. It might be noted, parenthetically, that he has willingly given his name and address to other sources available to the direct mailing industry.

The cardinal requirement in an action for an injunction is proof of an irreparable injury. Even assuming that the plaintiff was offended by the receipt of this mail, "[t]here are some . . . inconveniences and annoyances which mem-

bers of society in the nature of things must absorb without the right of redress". *Davis* v. *General Finance & Thrift Corp.*, 80 Ga. App. 708, 57 S. E. 2d 225, 227. The pace at which our commercial world runs does not permit its inhabitants the seminarian solitude and serenity of the cloistered cleric without interference from the bustle of mundane life. This annoyance cannot be termed an injury.

"The mailbox, however noxious its advertising contents seem to judges as well as other people, is hardly the kind of enclave that requires constitutional defense to protect 'the privacies of life' ". *Lamont* v. *Commissioner of Motor Vehicles,* 269 F. Supp. 880, 883 (1967). These annoyances are not irreparable injuries within the contemplation of the law that can justify the issuance of an injunction—a harsh remedy—against the defendants.

While this disposes of the complaint of the plaintiff concluding further consideration of his case, since the commissioner has seen fit to stop completely his "packaging" service to the company with reference to all registrants, and since this is a matter of public interest, the court deems it necessary to pass upon the constitutional questions posed and the claim that the commissioner's selling of the information is unlawful. *State* v. *Sul,* 146 Conn. 78, 83, 84.

Section 1-19 of the Connecticut General Statutes—the so-called "Right-to-Know-Statute"—authorized the copying of all records kept by an administrative agency and clearly encompassed the records kept by the motor vehicle commissioner with reference to licenses and registrations of motor vehicles. This statute was repealed via P. A. No. 723 of the 1967 General Assembly. The supplanting statute repeated the rights of access to public records, but the

amendment excluded certain data from public revelation to reconcile the need of individuals for privacy in sensitive personal matters. It now excepts certain types of records including commercial or financial information from disclosure.

Section 14-10 expressly accords the public the right to inspect records pertaining to licenses and registrations of motor vehicles. No restriction appears therein. This statute, of long standing, was in effect when Public Act No. 723 was passed, and the legislature did not include automobile registration or license records in the list of records exempt from public viewing or copying. Obviously the legislature in enacting Public Act No. 723 did so with existing relevant statutes in mind and thus evinced a desire not to exempt license or motor vehicle registration data. The General Assembly is presumed to know all existing statutes and is presumed to know the effect which its non-action will have upon any one of them. *Hartley* v. *Vitielle,* 113 Conn. 74, 82. By not including license or motor vehicle registration data from public perusal, the legislature must have intended that the commissioner should continue to allow inspection of that information. And that right to inspect the records carries with it the right to copy them. *Direct Mail Service, Inc.* v. *Registrar of Motor Vehicles,* 296 Mass. 353, 5 N. E. 2d 545, 547.

Neither is the plaintiff's argument that the registration data is commercial or financial information and thus specifically excluded by Public Act No. 723 meritorious. While the information ultimately finds itself in the commercial and financial world, through correlation with other statistics, it is not commercial or financial information when received by the commissioner.

Section 14-49 (r) authorizes the commissioner to determine the charge for "a complete list of the owners of motor vehicles each year, and for current supplementary lists of new registrations." It is this section under which the commission effected the contract with the company. The plaintiff contends that the authority allows a compilation of the list of *owners* (emphasis added) only and not other information, such as addresses of owners.

An act should be construed in a way that avoids absurdity. *Blanos* v. *Kuleava,* 107 Conn. 476, 482. Furthermore, a statute conferring a privilege or a right carries with it by implication everything necessary to insure the realization of that privilege or to establish that right in order to make it effectual and complete. *Beroner* v. *State,* 144 Conn. 282, 288. It would be utterly useless and meaningless for the commissioner to sell and the company to buy just a list of names without the address and data the company obviously needed to effect its purpose in promoting its business.

The commissioner's sale of the registration information was lawful and under statutory authority.

The plaintiff maintains that even if this authority exists by statute, # 14-49 (r) is unconstitutional and permits an invasion of his privacy. He cites several provisions under the Constitution of Connecticut and the United States. His brief emphasizes the ninth (rights retained by people) and the fourteenth amendments—the so-called due process of law amendment. The plaintiff's position, even if sustained, would not give him the protection he seeks since all this statute purports to effect is the providing of authority to the commissioner to arrange a charge for providing the names "in bulk", as it were, rather than on an individual

basis. That is to say, even without this statute, under #14-10 the commissioner could disclose the information but not on a "packaging" basis. However, in the interests of justice the court will consider the proffered constitutional objections with relation to both statutes.

In considering the attack on the constitutionality of statutes, courts can assume that they were passed by the legislature not only to serve the best interest of the public of this state but also to operate in a manner not violative of individual rights. If there are any reasonable grounds sustaining the statute's validity, or if there is any proper public purpose served by the statute, the courts may presume that the legislature intended them. *State* v. *Doe,* 149 Conn. 216, 231 (1962). "The legislative department is the judge, within reasonable limits, to determine what public commerce and public welfare require, and the wisdom of its legislature is not the concern of the courts. It is our duty to sustain an act unless its invalidity is in our judgment beyond a reasonable doubt." *State* v. *Bassett,* 100 Conn. 430, 432, 433. The record is replete with evidence affording sufficient grounds for the existence of the laws under which the commissioner acted, particularly with reference to his contracting with the company. First of course is the tapping of a source of revenue, although it may not be the most inspired type of governmental function. *Lamont* v. *Commissioner of Motor Vehicles,* supra, 883. Other statistical data compiled by this "in bulk" furnishing of names has, as disclosed by the company's experience, potential or actual value in instant recall of defective vehicles potentially dangerous to the public, determination of parts inventory, publication of city directories, assistance to governmental

agencies and law enforcement officials. Indeed the plaintiff concedes a segment of the public welcomes the mail which he resents. Furthermore, this "packaging" method is more convenient for the commissioner rather than the manual preparation of the records.

It may well be that the actual benefit to the public is outweighed by the inconvenience and mischief caused by disclosure of names and addresses of registrants and that the receipt of tons of unwanted mail from direct mailing institutions "has aroused resentment among many householders who find their mailboxes and patience loaded by these commercials," as recently editorialized in the New Haven Evening Register. However, courts cannot concern themselves with the wisdom of statutory provisions, and such complaints of the "there-ought-to-be-a-law" variety are best addressed to the legislature rather than to the courts. It is noted that Congress recently passed legislation relative to prohibition of pandering advertisements in the mails. Public Law, 90-206, 90th Congress, December 16, 1967.

However, no such hue and cry seems to have pervaded the halls of our legislature. A reading of the minutes of a legislative committee hearing on April 1, 1965 relative to Bill No. 3604 entitled "An Act Concerning the Prohibition of the State or State Agencies from Selling Lists of Names" reveals complete opposition by representatives of various interests determined to perpetuate the present system. Nobody appeared in support of the measure, certainly affording some justification for the legislature's retaining #14-49 (r) on the statute books. When the legislature has enacted a statute, the terms of which are clear and precise,

it is the duty of the courts to apply it without limitation, extension, or exception. *Washburn* v. *LaMay,* 116 Conn. 576, 578. The statutes, ##14-10 and 14-49 (r) meet the test of constitutionality.

To summarize: (a) The plaintiff has failed to sustain the burden of proof that his right of privacy has been invaded, (b) the plaintiff has failed to demonstrate an irreparable injury, (c) the commissioner's action in selling registration information to the defendant company is sanctioned under the law, and (d) the statutes in question (## 14-10 and 14-49 (r)) are constitutionally unassailable.

Judgment may enter for the defendants. No costs will be taxed.

GRILLO, *J.*